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Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Report of the Working Group on Arbitrary Detention

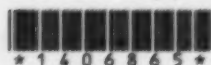
Chair-Rapporteur: Mads Andenas

Summary

During 2013, the Working Group on Arbitrary Detention, under its regular procedure, adopted 60 opinions concerning the detention of 431 persons in 39 countries (see A/HRC/27/48/Add.1). It also transmitted a total of 110 urgent appeals to 37 States concerning 680 individuals. States informed the Working Group that they had taken measures to remedy the situation of detainees: in some cases, detainees had been released; in other cases, the Working Group was assured that the detainees concerned would be guaranteed a fair trial. The Working Group is grateful to those Governments that heeded its appeals and took steps to provide it with the requested information on the situation of detainees. The Working Group engaged in continuous dialogue with countries that it visited, particularly concerning its recommendations. Information regarding the implementation of recommendations made by the Working Group was received from the Governments of Georgia and Senegal. During 2013, the Working Group visited Brazil, Greece, Hungary and Morocco. The reports on those visits are contained in addenda 2, 3, 4 and 5 to the present report.

Pursuant to Human Rights Council resolution 20/16 adopted on 6 July 2012, the Working Group has initiated the preparations concerning the draft basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful. The draft basic principles and guidelines are intended to assist Member States in fulfilling their obligation to avoid arbitrary deprivation of liberty. The Working Group has prepared a specific report on national, regional and international laws, regulations and practices relating to the right to challenge the lawfulness of detention before a court (A/HRC/27/47). A report comprising the draft basic principles and guidelines will be submitted to the Human Rights Council in 2015.

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In its recommendations, the Working Group requests States to enforce the protection of every person's right to liberty under customary international law; to ensure that the required guarantees and safeguards are extended to all forms of deprivation of liberty; and to ensure that persons are not held in pretrial detention for periods longer than those prescribed by law, as well as ensuring that such persons are promptly brought before a judge. With respect to the thematic issues addressed in this report, the Working Group recommends that the practice of protective custody should be eliminated and replaced with alternative measures that ensure the protection of women and girls without jeopardizing their liberty. It also calls on States to ensure that preventive detention is proportionate and justified by compelling reasons and that detention of asylum seekers and irregular migrants is used a last resort only for the shortest period of time. The detention should be subject to regular periodic reviews by an independent judicial body and the legality of detention must be open to challenge before a court. The Working Group also requests the Human Rights Council to study the adoption of a set of principles to be applied to military courts.

Contents

	Paragraphs	Page
I. Introduction.....	1-3	4
II. Activities of the Working Group in 2013.....	4-65	4
A. Handling of communications addressed to the Working Group during 2013.....	10-31	5
B. Country visits	32-59	15
C. Follow-up to the joint study on secret detention	60	19
D. Prevention of imminent arbitrary deprivation of liberty.....	61-65	19
III. Thematic issues	66-79	20
A. Military justice	66-71	20
B. Over-incarceration	72-77	21
C. Protective custody	78-79	22
IV. Conclusions.....	80-86	23
V. Recommendations.....	87-94	24

I. Introduction

1. The Working Group on Arbitrary Detention was established by the former Commission on Human Rights in its resolution 1991/42 and entrusted with the investigation of instances of alleged arbitrary deprivation of liberty, according to standards set forth in the Universal Declaration of Human Rights and relevant international instruments accepted by the States concerned. The mandate of the Working Group was clarified and extended by the Commission in its resolution 1997/50 to cover the issue of administrative custody of asylum seekers and immigrants. At its sixth session, the Human Rights Council assessed the mandate of the Working Group and in resolution 6/4 confirmed its scope. On 26 September 2013, in its resolution 24/7, the Council extended the Working Group's mandate for a further three-year period.

2. During 2013, the Working Group was composed of Shaheen Sardar Ali (Pakistan), Mads Andenas (Norway), Roberto Garretón (Chile), El Hadji Malick Sow (Senegal) and Vladimir Tochilovsky (Ukraine).

3. Between 1 January 2013 and 12 November 2013, El Hadji Malick Sow was the Chair-Rapporteur of the Working Group and Shaheen Sardar Ali its Vice-Chair. On 13 November 2013, Mads Andenas was elected Chair-Rapporteur of the Working Group and Vladimir Tochilovsky was elected Vice-Chair.

II. Activities of the Working Group in 2013

4. During the period from 1 January to 31 December 2013, the Working Group held its sixty-sixth, sixty-seventh and sixty-eighth sessions. It undertook official missions to Greece (21–31 January 2013), Brazil (18–28 March 2013), Hungary (23 September–2 October 2013) and Morocco (9–18 December 2013). See addenda 2, 3, 4 and 5, respectively, for the country visit reports.

5. In November 2011, the Working Group launched a database, accessible at www.unwgadatabase.org, which is a freely and publicly available compilation of its opinions on individual cases of detention. The database provides over 600 opinions in English, French and Spanish that have been adopted since the establishment of the Working Group in 1991. During 2013, the database was consulted by some 3,000 visitors in different regions of the world. The database provides a practical research tool for victims, lawyers, academics and others who would like to prepare and submit cases of alleged arbitrary deprivation of liberty to the Working Group.

6. Pursuant to Human Rights Council resolution 20/16, the Working Group initiated preparations concerning the draft basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful.

7. The Working Group, by means of a questionnaire, sought the views of States, relevant United Nations agencies, intergovernmental organizations, United Nations treaty bodies, in particular the Human Rights Committee, other special procedures, national human rights institutions, non-governmental organizations and other relevant stakeholders. The Working Group has so far received replies to its questionnaire from 44 States, 20 national human rights institutions, 3 regional entities, 8 non-governmental organizations, 5 special procedures mandate holders and the Human Rights Committee.

8. In addition to the present report, the Working Group is submitting to the Human Rights Council a specific report on national, regional and international laws, regulations and practices relating to the right to challenge the lawfulness of detention before court. That report is based on information obtained from stakeholders and on the Working Group's additional review of relevant regional and international legal frameworks (A/HRC/27/47).

9. On 1 and 2 September 2014, the Working Group will hold a consultation with stakeholders in relation to the preparation of the first draft of basic principles and guidelines on remedies and procedures on the right to challenge the lawfulness of detention before court. A final report comprising the outcome of the stakeholders' consultation and the draft basic principles and guidelines will be submitted to the Human Rights Council in 2015.

A. Handling of communications addressed to the Working Group during 2013

1. Communications transmitted to Governments

10. Hyperlinks to a description of the cases transmitted and the contents of the replies of Governments can be found in the related opinions adopted by the Working Group (see A/HRC/27/48/Add.1).

11. During its sixty-sixth, sixty-seventh and sixty-eighth sessions, the Working Group adopted 60 opinions concerning 431 persons in 39 countries. Some details of those opinions are provided in the table below. The hyperlinks to the complete texts of opinions Nos. 1/2013 to 60/2013 are contained in addendum 1 to the present report.

2. Opinions of the Working Group

12. Pursuant to its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group, in addressing its opinions to Governments, drew their attention to resolutions 1997/50 and 2003/31 of the former Commission on Human Rights and resolutions 6/4 and 24/7 of the Human Rights Council, in which they were requested to take account of the Working Group's opinions and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty and to inform the Working Group of the steps they had taken. On the expiry of a two-week deadline, the opinions were transmitted to the relevant sources.

Opinions adopted during the sixty-sixth, sixty-seventh and sixty-eighth sessions of the Working Group

<i>Opinion No.</i>	<i>Country</i>	<i>Government's reply</i>	<i>Government's reply or information submitted after the adoption of opinions</i>	<i>Person(s) concerned</i>	<i>Opinion</i>
1/2013	Tunisia	No	No	Abdelwahed Abdallah	Detention arbitrary, categories I and III
2/2013	Barbados	Yes	-	Raoul Garcia	Detention arbitrary, categories III and IV
3/2013	Morocco	Yes	-	Abdessamad Bettar	Detention arbitrary, categories I and III

<i>Opinion No.</i>	<i>Country</i>	<i>Government's reply</i>	<i>Government's reply or information submitted after the adoption of opinions</i>	<i>Person(s) concerned</i>	<i>Opinion</i>
4/2013	Uzbekistan	Yes	-	Gaybullo Jalilov	Detention arbitrary, categories II, III and V
5/2013	Turkmenistan	Yes	-	Maksat Kakabaev and Murad Ovezov	Detention arbitrary, category II
6/2013	Turkey	Yes	-	250 detained defendants in the Balyoz or Sledgehammer cases	Detention arbitrary, category III
7/2013	Romania	No	No	Ikechukwu Joseph Ojike	Case filed
8/2013	Russian Federation	Yes	-	Denis Matveyev	Detention arbitrary, categories II and III
9/2013	Sri Lanka	Yes	-	Santhathewan Ganesaratnam	Detention arbitrary, category III
10/2013	United States of America	No	Yes	Mr. Obaidullah	Detention arbitrary, categories I, III and V
11/2013	Tajikistan	Yes	-	Ilhom Ismailovich Ismonov	Detention arbitrary, category III
12/2013	Bahrain	Yes	-	Nabeel Abdulrasool Rajab	Detention arbitrary, categories II and III
13/2013	Switzerland	Yes	-	Mohamed El Ghanam	Detention not arbitrary (paragraph 17 (a) of the methods of work)
14/2013	Burundi	No	No	Joseph Kalimbiro Ciusi, Mutambala Swedi Fataki, Mpahije Félix Kasongo, Jacques Obengi Songolo and Maneno Tundula	Case pending on additional information from the Government or the source (paragraph 17 (c) of the methods of work)
15/2013	Comoros	No	No	Mohamed Amiri Salimou	Case filed (person released) (paragraph 17 (a) of the methods of work)
16/2012	Panama	No	No	Oscar Pompilio Estrada Laguna and Norberto Monsalve Bedoya	Detention arbitrary, categories I and III
17/2013	Cuba	Yes	-	Ulises González Moreno	Detention arbitrary, categories II and III

<i>Opinion No.</i>	<i>Country</i>	<i>Government's reply</i>	<i>Government's reply or information submitted after the adoption of opinions</i>	<i>Person(s) concerned</i>	<i>Opinion</i>
18/2013	Iran (Islamic Republic of)	No	No	Saeed Abedinialangashi	Detention arbitrary, categories II, III and V
19/2013	Morocco	Yes	-	Mohamed Dihani	Detention arbitrary, category III
20/2013	Argentina	No	Yes	Guillermo Luis Lucas	Detention arbitrary, category III
21/2013	Mexico	No	No	Juan García Cruz and Santiago Sánchez Silvestre	Detention arbitrary, category III
22/2013	Turkmenistan	Yes	-	Gulgeldy Annaniyazov	Detention arbitrary, categories II and III
23/2013	France	Yes	-	Georges Ibrahim Abdallah	Detention not arbitrary (paragraph 17 (b) of the methods of work)
24/2013	Cambodia	No	No	Yorm Bopha	Detention arbitrary, category II
25/2013	Morocco	No	Yes	Ali Aarrass	Detention arbitrary, category III
26/2013	Viet Nam	Yes	-	Francis Xavier Dang Xuan Dieu, Peter Ho Duc Hoa, John the Baptist Nguyen Van Oai, Anthony Chu Manh Son, Anthony Dau Van Doung, Peter Tran Huu Duc, Paulus Le Van Son, Hung Anh Nong, John the Baptist Van Duyet, Peter Nguyen Xuan Anh, Paul Ho Van Oanh, John Thai Van Dung, Paul Tran Minh Nhat, Mary Ta Phong Tan, Vu Anh Binh Tran and Peter Nguyen Dinh Cuong	Detention arbitrary, categories II, III and V
27/2013	United Arab Emirates	No	Yes	Rami Shaher Abdel Jalil Al Mrayat	Detention arbitrary, category III
28/2013	Iran (Islamic Republic of)	No	Yes	Amir Nema Hekmati	Detention arbitrary, category III
29/2013	Tunisia	No	Yes	Jabeur Mejri	Detention arbitrary, category II

<i>Opinion No.</i>	<i>Country</i>	<i>Government's reply</i>	<i>Government's reply or information submitted after the adoption of opinions</i>	<i>Person(s) concerned</i>	<i>Opinion</i>
30/2013	Uzbekistan	Yes	-	Yuri Korepanov	Case filed (person released) (paragraph 17 (a) of the methods of work)
31/2013	Paraguay	No	No	Lucía Agüero Romero, Felipe Nery Urbina Gamarra, Luis Olmedo Paredes, Arnaldo Quintana, Alcides Ramírez Paniagua, Juan Carlos Tillaría, Richard Ariel Barrios Cardozo, Felipe Benítez Balmori, Adalberto Castro, Néstor Castro, María Fanny Olmedo, Dolores López Peralta and Arnaldo Quintana	Case pending of additional information from the Government and the source (paragraph 17 (c) of the methods of work)
32/2013	Saudi Arabia	No	No	Khaled Al-Omeir	Detention arbitrary, categories I, II and III
33/2013	Viet Nam	Yes	-	Le Quoc Quan	Detention arbitrary, category III
34/2013	Democratic People's Republic of Korea	Yes	-	Kim Im Bok, Kim Bok Shil, Ann Gyung Shin, Ann Jung Chul, Ann Soon Hee and Kwon Young Guen	Detention arbitrary, categories I, II and III
35/2013	Democratic People's Republic of Korea	Yes	-	Choi Seong Jai, Hong Won Ok, Kim Seong Do, Kim Seong Il, Lee Hak Cheol, Lee Gook Cheol, Kim Mi Rae, and Lee Jee Hoon	Detention arbitrary, categories I, II and III
36/2013	Democratic People's Republic of Korea	Yes	-	Choi Sang Soo, Choi Seong Il, Kim Hyeon Sun, Kim Geong Il and Park Sung Ok	Detention arbitrary, categories I, II and III
37/2013	Bangladesh	No	No	Adilur Rahman Khan	Detention arbitrary, categories II and III
38/2013	Cameroon	No	Yes	Michel Thierry Atangana Abega	Detention arbitrary, categories I, II and III
39/2013	Egypt	No	Yes	Mohamed Mohamed Morsi Eissa El-Ayyat, Ahmed Abdel Atty, Essam Al- Haddad, Khaled El-Kazaz, Abdelmageed Meshali, Asaad El-Sheikha and Ayman Ali	Detention arbitrary, category III

<i>Opinion No.</i>	<i>Country</i>	<i>Government's reply</i>	<i>Government's reply or information submitted after the adoption of opinions</i>	<i>Person(s) concerned</i>	<i>Opinion</i>
40/2013	Uzbekistan	Yes	No	Abdumavlon Abdurakhmonov	Case filed (person released) (paragraph 17 (a) of the methods of work)
41/2013	Libya	No	Yes	Saif Al-Islam Gaddafi	Detention arbitrary, category III
42/2013	United Arab Emirates	No	No	Abdullah Al Hadidi	Detention arbitrary, categories I and II
43/2013	Syrian Arab Republic	No	No	Mazen Darwish, Mohamed Hani Al Zaitani and Hussein Hammad Ghrer	Detention arbitrary, categories II and III
44/2013	Saudi Arabia	No	No	Yahya Hussein Ahmad Shaqibel	Detention arbitrary, categories I, II and III
45/2013	Saudi Arabia	Yes	-	Mohammad Salih Al Bajadi	Detention arbitrary, category II
46/2013	Saudi Arabia	No	No	Abdulkarim Al Khodr	Detention arbitrary, category II
47/2013	Venezuela (Bolivarian Republic of)	Yes	-	Antonio José Rivero González	Detention arbitrary, categories II and III
48/2013	Sri Lanka	No	Yes	Varnakulasingham Arulanandam	Detention arbitrary, categories I and III
49/2013	Myanmar	No	No	Tun Aung (a.k.a. Nurul Haque)	Detention arbitrary, categories II, III and V
50/2013	Myanmar	Yes	No	Laphai Gam	Detention arbitrary, categories II, III and V
51/2013	Bangladesh	No	No	Rizvi Hassan	Detention arbitrary, category III
52/2013	Iran (Islamic Republic of)	No	No	Khosro Kordpour and Massoud Kordpour	Detention arbitrary, categories II and III
53/2013	Jordan	No	No	Hisham Al Heysah, Bassem Al Rawabedah, Thabet Assaf and Tarek Khoder	Detention arbitrary, categories II and III
54/2013	Morocco	Yes	-	Mustapha El Hasnaoui	Detention arbitrary, categories II and III
55/2013	Iran (Islamic Republic of)	No	No	Bahman Ahamdi Amouee	Detention arbitrary, categories II and III

<i>Opinion No.</i>	<i>Country</i>	<i>Government's reply</i>	<i>Government's reply or information submitted after the adoption of opinions</i>	<i>Person(s) concerned</i>	<i>Opinion</i>
56/2013	Myanmar	Yes	-	Ko Htin Kyaw	Detention arbitrary, category II
57/2013	Djibouti, Sweden and the United States of America	Yes: (Sweden); No: (Djibouti and United States of America)	No	Mohamed Yusuf and Ali Yasin Ahmed.	Case filed concerning Sweden. Concerning Djibouti and the United States of America: detention arbitrary, categories I and III
58/2013	Mexico	Yes	-	Marco Antonio de Santiago Ríos	Case pending on additional information from the Government and the source (paragraph 17 (c) of the methods of work)
59/2013	Azerbaijan	Yes	-	Hilal Mammadov	Detention arbitrary, categories II and III
0/2013	United Arab Emirates	No	No	61 individuals: Ahmed Ghaith Al Suwaidi, Ahmed Al Zaabi, Ali Al Hammadi, Ibrahim al Marzooqi, Hassan Al Jabiri, Husain Al Jabiri, Shaheen Alhosani, Sultan Bin Kayed Al Qasimi, Saleh Al-Dhufairi, Salim Sahooh, Ahmed Al Tabour Al Nuaimi, Khalid Al Sheiba Al-Nuaimi, Mohamed Al Mansoori, Husain Al-Najjar Al Hammadi, Abdulrahman Al-Hadidi, Rashid Omran Al Shamsi, Essa Al-Sari Al Muhairi, Mohamed Abdullah Al-Roken, Salim Hamdoon Al Shahi, Juma Darwish Al-Felasi, Tariq Al-Qasim, Saif Al Egleh, Hamad Roqait, Abdulraheem Al-Zarooni, Musabeh Al-Rumaithi, Tariq Hassan Al-Qattan Al Harmoudi,	Detention arbitrary, categories I, II and III

<i>Opinion No.</i>	<i>Country</i>	<i>Government's reply</i>	<i>Government's reply or information submitted after the adoption of opinions</i>	<i>Person(s) concerned</i>	<i>Opinion</i>
				Saeed Nasser Al-Wahidi, Ali Abdullah Mahdi Saleh, Abdulsalam Darwish Al Marzooqi, Khalid Mohammed Alyammahi, Ahmed Saqer Alsuwaidi, Saif Aletr Al Dhanhan, Hassan Mohammed Al Hammadi, Fuad Mohammed Al Hammadi, Ahmed Saif Almatri, Najeeb Amiri, Abdulaziz Hareb, Abdullah Al-Jabiri, Ali Abdulla Alkhaja, Rashid Khalfan Bin Sabt, Ali Salim Al Awad Al-Zaabi, Ali Saeed Al- Kindi, Hadif Al-Owais, Mohammed Al-Abdouli, Salem Mousa Farhan Alhalyan, Ahmed Hajji Al-Qobaisi, Ahmed Hassan Al-Rostomani, Ahmed Knyed Al-Muhairi, Ismael Abullah Al-Hosani, Khaled Fadel Ahmed, Ali Muhammad Al Shahi, Essa Khalifa Al Suwaidi, Abdulrahim Abdallah Al Bestaky, Muhammad Abdulrazzaq Al Abdouly, Khalifa Hillel, Ibrahim Ismail Al Yaqoub, Amrane Ali Hassan Al Harithi, Mahmoud Hassan Al Houssani, Abdallah Abdelqader Al Hajiri, Mansoor Ahmad Al Ahmady, Fahd Abdelqader Al Hajiri.	

3. Reactions from Governments concerning previous opinions

13. By note verbale dated 1 February 2013, the Permanent Mission of Sri Lanka to the United Nations Office at Geneva reported that Gunasundaram Jayasundaram, who was the subject of opinion No. 38/2012 (Sri Lanka), was indicted in November 2012 under section 5 of the Prevention of Terrorism Act before the High Court of Vavuniya (case No. HC/2424/12). The Sri Lankan law enforcement authorities are investigating more serious charges against him. They are in touch with the Singaporean authorities in relation to mutual legal assistance matters. Mr. Jayasundaram pleaded guilty to the charge against him and was convicted pursuant to his pleas. The High Court of Vavuniya sentenced him to one month's simple imprisonment.

14. With respect to opinion No. 26/2012, the Permanent Mission of Sri Lanka to the United Nations Office at Geneva reported that Pathmanathan Balasingam had admitted his

participation in attacks against security forces as a member of the Liberation Tigers of Tamil Eelam (LTTE). He was indicted before the Anuradhapura High Court under the Prevention of Terrorism Act (case No. HC.185/2011). Concerning Vijiyanthan Seevaratnam, the Government reported that he had joined LTTE, undergone military training at Wattakachch base and used anti-aircraft missile guns. The Attorney General has offered him rehabilitation as an alternative to criminal prosecution.

15. The Permanent Mission of Sri Lanka to the United Nations Office at Geneva, in relation to opinion No. 49/2011 (Sri Lanka), reported that Jegasothy Thamotharampillai and Sutharsini Thamotharampillai had been detained under Emergency Regulation 19, paragraph 1. They were indicted before the Colombo High Court and pleaded guilty. On 20 October 2011, they were sentenced to one year and to three months' imprisonment, respectively.

16. By note verbale dated 14 February 2013, the Permanent Mission of Togo to the United Nations Office at Geneva submitted its Government's observations to opinion No. 41/2012 (Togo) concerning Sow Bertin Agba.

17. The Permanent Mission of Iraq to the United Nations Office at Geneva submitted brief information on 18 persons mentioned in opinion No. 43/2012 (Iraq).

18. The Permanent Mission of Saudi Arabia to the United Nations Office at Geneva submitted information concerning Khaled Abdulrahman Al-Twijri and Abdulaziz Nasser Abdallah Al Barahim, who were the subjects of opinion No. 8/2012 (Saudi Arabia). It reported that all the allegations concerning Mr. Al-Twijri were inaccurate. He was arrested on charges of harbouring; failing to report and providing services for wanted persons; leaving Saudi Arabia illegally using forged documents; and adopting the ideology and policy of the Al-Qaida organization. Mr. Al Barahim was duly informed of the charges brought against him and was allowed to contact his family and receive visits in accordance with article 116 of the Criminal Procedure Code. He did not request the appointment of legal counsel.

19. By letter dated 11 July 2013, the Acting Deputy Permanent Representative of the United States of America to the United Nations Office at Geneva reported that Mr. Obaidullah, an Afghan national detained at the United States Naval Station at Guantánamo Bay and the subject of opinion No. 10/2013 (United States of America), was being detained pursuant to the Authorization for Use of Military Force (public law 107-40, sect. 2 (a)), as informed by the law of war, in the ongoing armed conflict with Al-Qaida, the Taliban and associated forces. According to the Government, Mr. Obaidullah's detention is not penal in nature; he is being detained under the law of war to prevent his return to hostilities against the United States for the duration of those hostilities. Mr. Obaidullah has availed himself of the opportunity to challenge his military detention in the United States federal court system. He petitioned the Supreme Court to review his case but that petition was denied on 24 June 2013. On 7 March 2011, the President of the United States issued Executive Order 13567 establishing a new process of periodic review for the detainees at Guantánamo Bay who are designated for continued detention under the law of war or referred for prosecution but not yet charged or convicted. Mr. Obaidullah is eligible to receive a periodic review under that process. Each detainee, aided by his representative, is permitted to participate in the review process by presenting a written or oral statement, introducing relevant information and answering any question. Additionally, the detainee may call reasonably available witnesses.

20. By note verbale dated 3 December 2012, the Permanent Mission of Belarus to the United Nations Office at Geneva stated that opinion No. 39/2012 (Belarus) on the detention of Aleksandr Viktorovich Bialatski was biased, non-authoritative and politically motivated (see A/HRC/22/G/2). According to the Government, Mr. Bialatski has been condemned for committing a serious punishable offence involving tax evasion on a particularly large scale

and not for his fundraising activities for the organization Viasna. The sentence imposed on him cannot be seen as a violation of article 20, paragraph 1, of the Universal Declaration of Human Rights or of article 22 of the International Covenant on Civil and Political Rights.

21. By note verbale dated 25 October 2013, the Permanent Mission of Argentina to the United Nations Office at Geneva reported, with respect to the detention of Guillermo Luis Lucas, that domestic remedies had not been exhausted. The intervention of an international body would thus be premature.

22. By note verbale dated 24 September 2013, the Permanent Mission of Morocco to the United Nations Office at Geneva reported that Ali Aarrass was sentenced in the first instance, on 24 November 2011, to 15 years' imprisonment. In October 2012, that sentence was commuted to 12 years' imprisonment. He was sentenced on the basis of articles 293, 294 and 295 of the Penal Code (criminal association and assistance to criminals) and of article 218-1, paragraph 9 (participation in an association formed or in an agreement oriented to the preparation of the commission of an act of terrorism). The court has not yet ruled upon Mr. Aarrass's appeal. The Government assures the Working Group that all measures will be taken to give Mr. Aarrass the benefit of medical examinations. Instructions will be given to ensure that his fundamental rights as a detainee are respected.

Release of subjects of the Working Group's opinions

23. The Working Group received information from Governments and sources on the release of the following subjects of its opinions:

- Nasrin Sotudeh, an Iranian human rights lawyer who was the subject of opinion No. 21/2011 (Islamic Republic of Iran), was released on 18 September 2013 along with 10 other political prisoners
- The Government of Saudi Arabia reported that Salman Mohamed Al Fouzan was currently at liberty (opinion No. 8/2012 (Saudi Arabia))
- It also reported that Saeed Muhammad Eid Al Khamissi, whose detention was also considered arbitrary by opinion No. 8/2012 (Saudi Arabia), was sentenced by the court of first instance to a term of five years' imprisonment, confiscation of the items seized and a travel ban for the same period. The Public Prosecutor filed an objection to that judgement, which is being reviewed by the Appeal Court. In the meantime, the person is at liberty
- On 17 March 2014, a source reported that Guillermo Luis Lucas had been released (opinion No. 20/2013 (Argentina))
- Israel Arzate Meléndez, who was the subject of opinion No. 67/2011 (Mexico), was released on 6 November 2013, pursuant to the judgement of the First Chamber of the Supreme Court of Justice of the Nation
- Michel Thierry Atangana Abega, who was the subject of opinion No. 38/2013 (Cameroon), was released pursuant to a presidential decree on 24 February 2014. On 29 April 2014, Mr. Atangana and his representatives travelled to Geneva and met with the members of the Working Group during its sixty-ninth session. They expressed their gratitude for the Working Group's opinion and indicated that the Government of Cameroon had not yet implemented the two remaining recommendations of the Working Group, on investigation and compensation. They further stressed the effectiveness of the Working Group's opinions in ending the practice of arbitrary detention

24. The Working Group expresses its gratitude to those Governments that took positive action and released detainees who were subjects of its opinions.

4. Requests for review of opinions adopted

25. The Working Group considered the concerned Governments' requests for review of the following opinions: opinion No. 46/2012 (Guatemala), opinion No. 62/2012 (Ethiopia) and opinion No. 37/2012 (Spain). After carefully and closely examining the requests for review, the Working Group rejected the requests for review, in accordance with paragraph 21 of its methods of work (A/HRC/16/47, annex, and Corr.1).

5. Reprisal against a subject of an opinion of the Working Group

26. The Working Group expresses its concern regarding the continued detention under house arrest of Maria Lourdes Afiuni Mora, the subject of its opinion No. 20/2010 (Bolivarian Republic of Venezuela), who was arrested in 2009 for ordering the conditional release of Eligio Cedeño, the subject of the Working Group's opinion No. 10/2009 (Bolivarian Republic of Venezuela). The Working Group considers the action against Ms. Afiuni as a measure of reprisal. It calls on the Government of the Bolivarian Republic of Venezuela to immediately release Ms. Afiuni and to provide her with effective reparations.

6. Communications (urgent appeals and other letters)

27. During the period from 1 January 2013 to 31 December 2013, the Working Group sent 110 urgent appeals to 37 countries concerning 680 individuals. Urgent appeals were sent to the following countries:

Angola (1); Azerbaijan (2); Bahrain (4); Bangladesh (4); Belarus (1); Cambodia (1); China (10); Colombia (1); Egypt (7); Equatorial Guinea (3); India (2); Iran (Islamic Republic of) (13); Iraq (5); Israel (2); Italy (1); Kazakhstan (1); Mexico (1); Morocco (1); Myanmar (9); Nigeria (3); Oman (1); Panama (1); Saudi Arabia (6); Somalia (1); State of Palestine (1); the Sudan (5); Syrian Arab Republic (1); Tajikistan (1); Tunisia (1); Turkey (3); Ukraine (1); United Arab Emirates (3); United States of America (1); Venezuela (Bolivarian Republic of) (2); Viet Nam (5); Yemen (3) and Zimbabwe (1).

The full text of the urgent appeals can be consulted in the joint reports on communications.¹

28. In conformity with paragraphs 22 to 24 of its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group, without prejudging whether a detention was arbitrary, drew the attention of each of the Governments concerned to the specific case as reported, and appealed to them to take the necessary measures to ensure that the detained persons' rights to life and to physical integrity were respected.

29. When the appeal made a reference to the critical state of health of certain persons or to particular circumstances, such as failure to execute a court order for release, the Working Group requested the Government concerned to take all necessary measures to have the person concerned released. In accordance with Human Rights Council resolution 5/2, the Working Group integrated into its methods of work the prescriptions of the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council relating to urgent appeals and has since applied them.

30. During the period under review, the Working Group also sent two letters of allegation to Nigeria and Sudan, pursuant to the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council.

¹ For urgent appeals sent from 1 December 2012 to 28 February 2014, see A/HRC/23/51, A/HRC/24/21, A/HRC/25/74, A/HRC/26/21.

31. The Working Group wishes to thank those Governments that heeded its appeals and took steps to provide it with information on the situation of the persons concerned, especially the Governments that released those persons. In other cases, the Working Group was assured that the detainees concerned would receive fair trial guarantees.

B. Country visits

1. Requests for visits

32. The Working Group has been invited to visit Argentina (a follow-up visit), Azerbaijan, Burkina Faso, Germany (a follow-up visit), India, Italy (a follow-up visit), Japan, Libya, Malta (a follow-up visit), Nauru, Spain and the United States of America. With respect to Nauru, the Working Group was invited by the Government to visit the country from 14 to 19 April 2014 and regrets that the Government cancelled the visit on 24 March 2014 owing to unforeseen circumstances. The alternative dates for the visit in 2014 are under discussion and the Working Group looks forward to closely working with the Government of Nauru in organizing the visit.

33. The Working Group has also asked to visit Algeria, Bahrain (a follow-up visit), Egypt, Ethiopia, Fiji, Guinea-Bissau, Nicaragua (a follow-up visit limited to Bluefields), Papua New Guinea, the Philippines, the Russian Federation, Saudi Arabia, the Syrian Arab Republic, Thailand, Turkmenistan, Uzbekistan and the Bolivarian Republic of Venezuela.

2. Follow-up to country visits of the Working Group

34. In accordance with its methods of work, the Working Group decided in 1998 to address a follow-up letter to the Governments of countries it had visited, requesting information on initiatives the authorities might have taken to give effect to recommendations adopted by the Working Group contained in the reports on its country visits (E/CN.4/1999/63, para. 36).

35. In 2013, the Working Group requested information from Georgia and Germany, countries it had visited in 2011. It had previously also requested information from Armenia, Italy, Malaysia and Senegal. It received information from the Governments of Georgia, Italy and Senegal.

Georgia

36. The Government of Georgia informed the Working Group of the measures taken in compliance with the recommendations issued in the Working Group's report on its official mission to Georgia in 2011 (A/HRC/13/30/Add.2).

37. The Government of Georgia referred to the recommendation concerning the right of the detainee to be immediately informed of all his or her rights at the moment of the arrest. It reported that defendants must be released immediately if they were not informed upon arrest of their rights provided for in article 174 of the Criminal Procedure Code and were not given a copy of an arrest record. Statistical data provided by the Supreme Court of Justice shows that first instance courts had been using deprivation of liberty extensively up until 2013. However, that trend seems to be changing and alternative measures have started to prevail. The percentage of measures taken that order deprivation of liberty has fallen from 50.2 per cent in 2011, to 44.4 per cent in 2012 and 26.4 per cent during the first nine months of 2013. The percentage of cases heard in which bail was ordered increased to 37 per cent. The use of bail has now outstripped the use of deprivation of liberty.

38. The Public Defender of Georgia and representatives of his Office, as well as representatives of the International Committee of the Red Cross, have the right to freely

enter temporary detention isolators without any authorization. The 2013 Development Strategy for the Ministry of Internal Affairs of Georgia acknowledges the importance of monitoring those isolators, inter alia, through independent oversight bodies. A ministerial order of 17 May 2013 approved a new Police Code of Ethics and a directive for staff at those isolators. At the beginning of 2013, the duration of the basic training courses for police officers was doubled from three to six months and those courses include human rights subjects in their curricula. New methods for testing and interviewing candidates have been introduced. Riot, patrol, border and criminal police officers must be retrained periodically in order to improve their qualifications, particularly in the human rights area.

39. During the period 2012–2013, 146 investigations were launched into cases of ill-treatment cases; 48 persons were prosecuted, including the former head of the Penitentiary Department and several directors of prisons; 21 persons have been convicted. During the first nine months of 2013, 74 meetings with prisoners were held in various penitentiary facilities. Nine investigations for bodily injury were launched following prisoners' applications. A variety of mechanisms for raising concerns and the transmission of complaints are available to detainees. The Prosecutor's Office of Georgia, the Public Defender's Office and the General Inspectorate of the Ministry of Internal Affairs can be contacted at any moment.

40. The Government further reported that the duration of basic training courses for officers of the Patrol Police Department and the Border Police have been extended from 12 to 20 weeks and from 6 to 14 weeks, respectively. The courses are aimed at ensuring proper protection of the human rights of asylum seekers and other persons in need.

41. The first set of procedural law amendments aimed at enhancing the principle of adversariality were drafted in 2012. In accordance with the Working Group's recommendation, the amendments are aimed at ensuring equality of arms between the defence and the prosecution in criminal proceedings. The amendments to the Criminal Procedure Code were submitted to the Parliament of Georgia in June 2013. A new code on administrative offences is being drafted.

Senegal

42. The Government of Senegal reported that the rule of habeas corpus is well present in the criminal legislation of Senegal. Article 91 of the Constitution makes the judiciary the guardian of rights and freedoms. The principle of the independence of the judiciary is established in its article 88. The assistance of a lawyer is mandatory only in criminal matters. A legal aid fund is available.

43. Following a judgement in a criminal matter, a detainee may be sentenced to alternative prison measures (*contrainte par corps*), in addition to the award of damages and interest to the civil party, or fines. That applies in criminal matters exclusively, however, and never in civil cases. Alternative prison measures (*contrainte par corps*) are carefully regulated by the Criminal Procedure Code in its articles 7.9 and following.

44. The Organic Law of 2008 on the Supreme Court provides in its article 4 for the establishment of a commission to compensate persons who have spent several years in preventive detention. However, no regime has been formulated to regulate the application of the law.

45. The decree regulating prisons provides for disciplinary cells reserved for recalcitrant inmates and disruptive prisoners. In Senegal, detainees are subjected to disciplinary measures only exceptionally, however. The police misconduct which marked the 2012 presidential election campaign is currently the subject of judicial proceedings. A dozen gendarmes and police officers are being held in places of detention.

46. In total, there are 331 licensed lawyers and 33 interns. The Ministry of Justice reported that it was soon to undertake consultations with the Bar Association on how to guarantee broad access to the legal profession and to promote the presence of lawyers in the most remote regions of the country. The Ministry of Justice plans to increase the number of judges in the regional and district courts.

47. In criminal matters, the length of preventive detention is not yet limited. For ordinary offences, it is limited to six months, except in cases of the misappropriation of public funds. With regard to migrants, the time limit for administrative detention is between 15 and 30 days.

48. Like judges responsible for the execution of sentences, investigating judges must visit the detainees whom they have placed in detention.

49. The Government further reported that the prison administration had plans to build homes for women accused of infanticide, a detention centre with 1,500 places in Sébikotane, 40 kilometres from Dakar, and six regional facilities with 500 places each.

Italy

50. The Government of Italy informed the Working Group of the measures taken to implement the recommendations issued in the Working Group's report on its official visit to Italy in November 2008 (A/HRC/10/21/Add.5).

51. The Government of Italy referred to the recommendation concerning the need to shorten the duration of criminal trials with a view to ensuring better protection of the right to be tried without undue delay. It provided information on the enactment of a number of new laws and the introduction of regulatory changes designed to limit the use of remand in custody.

52. With regard to the recommendation to thoroughly investigate incidents of police brutality and to hold those responsible accountable, the Government reported that a strong normative framework had been designed in order to ensure provisions adequate to the service performed by the police forces. Each and every case/incident is duly and promptly investigated. More generally, training activities, including human rights-related courses, have been introduced for all law enforcement agencies, and prison staff are provided with relevant training and given frequent refresher courses. Reference is made to article 582 of the Criminal Code on the ill-treatment of persons deprived of their liberty, under which proceedings are often brought for the misconduct of law enforcement officials, even in cases of minor injuries. A system monitoring all critical events, including any injuries suffered by inmates, has been instituted. The Prison Administration Department provides information to all prison facilities on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). In addition, the establishment of a national ombudsman/guarantor of the rights of detainees and prisoners is currently pending approval by the Senate.

53. According to the Government, article 41 bis of Act No. 354 of 1975 (Penitentiary Act) provides for a regime of restrictions for prisoners from the upper echelons of mafia, terrorist or subversive criminal organizations. A total of 716 persons are currently subject to that regime, which has been strengthened by Act No. 94 of 2009. The Minister of Justice adopts a provision applying the regime, which lasts for four years and can be extended for an additional period of two years. The restrictions under the regime cannot be modified either by the administrative authority or the judicial authority, since they are established by the law.

54. With regard to measures for asylum seekers and persons entitled to international protection, Italy has adopted a strategy consisting of a number of initiatives aimed at, *inter alia*, ensuring their integration locally and strengthening the existing system. In that context, various measures to receive asylum seekers and refugees have been adopted, including reception centres and local-based projects for their protection system.

55. As regards the administrative detention of foreigners for the purpose of establishing their identity, article 14 of Legislative Decree No. 286/1998 provides for the adoption of a reasoned decree, of which the person concerned is to be notified and regarding which he or she can be heard, in person or through a legal counsel, before the judicial authority. The above measure is reported within 48 hours to the competent magistrate to be validated. A hearing is held in the presence of a legal counsel and the result thereof shall be promptly communicated to the person concerned. The foreign national enjoys the right to a defence, including free legal aid, and, if necessary, an interpreter. The court shall rule within 48 hours. The validation by the court entails the identification of the person concerned and a mandatory stay for that person in a reception centre for a period of 30 days, extendable by reasoned request for up to a maximum of 18 months, pursuant to Act No. 129/2011 which extended the maximum term of detention in a reception centre from 6 to 18 months. In that regard, the Vice-Minister of the Interior declared very recently that the Government intended to drastically reduce that term. More specifically, the Constitutional Court has never objected to the Italian system of detention in reception centres: the Italian legislation is in line with European Union directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals.

56. The Government reported that the complaints against Italy for violations related to expulsions of foreign citizens were numerous and that there had been an increase in the number of expulsions made on a preventive basis. Indeed, complaints related to judicial expulsions, including expulsions carried out as a security measure, constitute one third of those enforcing an administrative measure. The European Court of Human Rights has handed down several judgments on the subject, 14 of which found a violation, 4 of which concerned an alleged violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms for expulsions enforcing a judicial decision and 10 concerned administrative expulsions. In its response, the Government provided a comprehensive legal analysis of the matter.

57. With regard to the juvenile justice system, the Government reported that the changes to the Italian legal framework begun in 1988 had led to a new organizational structure and new management of the juvenile justice administrative services. The Department of Juvenile Justice, consisting of central and local administration offices, ensures the execution of the penal provisions of the juvenile court with a view to the social and occupational reintegration of children in conflict with the law, as provided for in article 27 of the Italian Constitution. The Government reported on a number of measures taken to improve the system and the various types of facilities for juvenile offenders.

58. The Government also reported that the process of closing the judicial psychiatric hospitals had started on 1 April 2008 with the Decree of the President of the Council of Ministers that transferred the responsibility for the penitentiary health-care service to the regions. In accordance with legislative decree No. 24 of 25 March 2013, the deadline for the closure of the judicial psychiatric hospitals had been postponed until 1 April 2014, in order to allow the regions to establish substantive health-care facilities and to arrange individual treatment and rehabilitation paths.

3. Terms of reference for country visits by the Working Group

59. At its sixty-ninth session, held from 22 April to 1 May 2014, the Working Group reviewed terms of reference for country visits which are designed to clarify the Working

Group's methods of work pertaining to the preparation and organization of, and follow-up to, its country visits. The Working Group intends to share the terms of reference with the Coordination Committee of Special Procedures for its consideration and to make them publicly available on the Working Group's web page. It is hoped that the terms of reference will enhance the transparency, visibility and understanding of the Working Group's country visits.

C. Follow-up to the joint study on secret detention

60. The Working Group has considered how it can contribute to the follow-up of the joint study on secret detention (A/HRC/13/42) within its mandate and will continue that consideration in 2014. It has discussed that with the current holders of other special mandates taking part in the joint study or otherwise having an interest in it or the follow-up. The Working Group will also address the follow-up to its own previous reports and opinions on detention and antiterrorism measures, taking account of subsequent developments, including the length of detention of individuals subject to indeterminate detention regimes.

D. Prevention of imminent arbitrary deprivation of liberty

61. The Working Group has continued its deliberations in situations where an individual is at risk of being arrested on an arrest warrant or detention order being issued against him or her and where the resulting deprivation of liberty is likely to be arbitrary in nature.

62. Under the Working Group's current methods of work, there is no mechanism addressing situations where there is sufficiently reliable information that the execution of an order of arrest will result in arbitrary deprivation of liberty. In effect, the Working Group currently has to wait until the arrest warrant is executed and the person is arbitrarily detained.

63. A mechanism might be applicable in situations when an individual is to be arrested solely because he or she has exercised the fundamental rights or freedoms guaranteed by international human rights law. Similarly, it could apply in situations where an imminent arrest would constitute a violation of international law prohibiting discrimination based on national or ethnic origin, religion, political or other opinion, gender, sexual orientation or other status, and which might result in the equality of human rights being ignored.

64. If such a preventive mechanism was available to the Working Group, then section V of its methods of work (urgent action procedure) would apply *mutatis mutandis* to the consideration of communications on imminent arbitrary deprivation of liberty.

65. As to action on communications in that category, two options can be considered: (a) if the Working Group considered that the imminent detention was not of an arbitrary nature, it would render an opinion to that effect, such an opinion not prejudging any further consideration by the Working Group of a communication in the case on other grounds provided for in its methods of work; (b) if the Working Group considered that the arbitrary nature of the imminent detention had been established, it would render an opinion to that effect and make recommendations to the Government.

III. Thematic issues

A. Military justice

66. Once again, the Working Group notes the irregularity of judges who are under military command trying civilians.² The experience of the Working Group is that military tribunals are often used to deal with political opposition groups, journalists and human rights defenders. The trial of civilians or decisions placing civilians in preventive detention by military courts are in violation of the International Covenant and customary international law as confirmed by the constant jurisprudence of the Working Group.

67. In the Working Group's view, there is an irreconcilable contradiction of values in the make-up of military courts, the main effect of which is not the denial of justice, but rather a direct injustice. One of the core values of a civilian judge is his or her independence, while the most appreciated value in a military official is exactly the opposite: his or her obedience to his or her superiors.

68. Therefore, as has been said by the Working Group, the intervention of a military judge who is neither professionally nor culturally independent is likely to produce an effect contrary to the enjoyment of the human rights and to a fair trial with due guarantees. The Working Group wishes to reiterate the human rights of accused persons, particularly their rights to be brought promptly before an independent and impartial judge; to be brought to trial in the shortest possible time; to be tried without undue delay; to challenge the lawfulness of their detention; to the presumption of innocence; to a public trial; to equality of arms between prosecution and defence; to access to evidence submitted by the prosecution; and other fundamental judicial guarantees of a fair trial. Supporters of military tribunals often insist on the urgency of swift justice and the need to maintain patriotic values. However, the Working Group notes that a court composed of a low-ranking soldier or other military personnel cannot be considered "a competent, independent and impartial tribunal", as defined under international human rights law.

69. The Working Group has set out below certain minimum guarantees that military justice must not fail to respect:

- (a) Military tribunals should only be competent to try military personnel for military offences;
- (b) If civilians have also been indicted in a case, military tribunals should not try military personnel;
- (c) Military courts should not try military personnel if any of the victims are civilians;
- (d) Military tribunals should not be competent to consider cases of rebellion, the sedition or attacks against a democratic regime, since in those cases the victims are all citizens of the country concerned;
- (e) Military tribunals should never be competent to impose the death penalty.

² See the following Working Group opinions: No. 20/2012 (Israel); No. 11/2012 (Egypt); No. 12/2012 (Egypt); No. 6/2012 (Bahrain); No. 3/2012 (Israel); No. 1/2012 (Egypt); No. 57/2011 (Egypt); No. 50/2011 (Egypt); No. 37/2011 (Syrian Arab Republic); No. 38/2011 (Syrian Arab Republic); No. 39/2011 (Syrian Arab Republic); No. 1/2011 (Syrian Arab Republic); No. 3/2011 (Egypt); No. 31/2010 (Bolivarian Republic of Venezuela); No. 32/2010 (Peru); No. 27/2010 (Syrian Arab Republic); No. 22/2010 (Egypt); No. 23/2010 (Myanmar); No. 13/2010 (Palestinian Authority); No. 9/2010 (Israel); No. 5/2010 (Israel).

70. The Working Group has found that justice done by the military in many instances falls into the five categories of arbitrariness identified in its methods of work.

(a) Category I: Military forces often stop and detain persons for a long time and military judges often order continuing detention in the absence of any legal basis;

(b) Category II: Many detainees brought before military courts have been detained simply for exercising a fundamental freedom, such as the freedom of opinion and expression, freedom of association, freedom of assembly or freedom of religion;

(c) Category III: Military judges and military prosecutors often do not meet the fundamental requirements of independence and impartiality; military procedures applied by military courts often do not respect the basic guarantees for a fair trial;

(d) Category IV: Individuals brought before military courts are often migrants in an irregular situation, asylum seekers and refugees captured by military forces at borders, at sea and in airports;

(e) Category V: Many people brought before military courts are foreign nationals coming from a country considered hostile to the country.

71. The Working Group recalls the draft principles on the administration of justice through military courts prepared by the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights (E/CN.4/2006/58) and requests the Human Rights Council to proceed to their consideration with a view to adopting a set of principles to be applied to military courts.

B. Over-incarceration

72. While recognizing that States enjoy a wide margin of discretion in the choice of their penal policies, the right to liberty of persons in article 9 of the International Covenant on Civil and Political Rights requires that States should have recourse to deprivation of liberty only insofar as it is necessary to meet a pressing societal need, and in a manner proportionate to that need (E/CN.4/2006/7, para. 63). In a previous report (E/CN.4/2006/7) in 2006, the Working Group noted with concern the practice of over-incarceration in the context of pretrial detention, as well as the factors that lead to over-incarceration, including detainees' ethnic or social origin, poverty and social marginalization. During its country visits and communications, the Working Group has criticized the persistent pattern of overuse of detention in a number of countries, as well as the emergence of varying regimes in which over-incarceration occurs, such as preventive detention and the detention of asylum seekers and migrants in an irregular situation.

73. Many countries have seen an increasingly rapid rate of legislative response to criminal acts, and are now beginning to experience the combined effects of habitual offender laws, generally increased minimum sentences with less discretion available to judges in each individual case, and post-conviction preventive detention. In addition, hastily drafted legislation on detention for the purposes of extradition or immigration control and security detention has often not taken account of basic international law obligations. Regimes allowing indeterminate detention are on the increase. Domestic courts may provide constitutional review, and regional mechanisms such as the Inter-American and European human rights courts provide supervision.

74. The Working Group's country visits and communications clearly demonstrate that international supervisory mechanisms such as the Human Rights Committee and the relevant special procedures have an important task in the years ahead in reviewing the proportionality of detention in domestic legislation and practice. The Working Group has also identified best practice in complying with the proportionality requirement. The

universal periodic review process of the Human Rights Council and other State-to-State peer review and dialogue-based mechanisms are providing increasing assistance to States in their compliance with international law obligations.

1. Preventive detention

75. In a number of countries, the Working Group has observed the use of preventive detention. Convicted persons who have served their sentence may continue to be deprived of their liberty on the basis that their release would pose a danger to society (see, for example, A/HRC/7/4/Add.2 and A/HRC/19/57/Add.3). When a criminal sentence includes a punitive period followed by a preventive period, the International Covenant on Civil and Political Rights and customary international law, as confirmed by the reports and constant jurisprudence of the Working Group, require that once the punitive term of imprisonment has been served, the preventive detention must be proportionate and justified by compelling reasons. It must be subject to regular periodic review by a court or by an independent body subject to judicial review that must be able to determine the continued justification for the detention. Strong procedural guarantees must be provided for the evaluation of future danger, and the proportionality review is no less strict at that stage and demands stronger reasoning as time passes. Post-conviction preventive detention must be a measure of last resort. The conditions in preventive detention must be distinct from the conditions for convicted prisoners serving a punitive sentence and be aimed at rehabilitation and reintegration into society. If a prisoner has served the sentence imposed at the time of conviction, articles 9 and 15 of the Covenant and customary international law forbid a retroactive increase in sentence. Detention equivalent to penal imprisonment cannot be imposed as civil preventive detention or under any other label.

2. Detention of asylum seekers and irregular migrants

76. Some States have resorted to administrative detention of asylum seekers and irregular migrants (see, for example, A/HRC/13/30/Add.2 and A/HRC/10/21/Add.5). Law and policy vary from State to State, and asylum seekers and irregular migrants are at risk of arbitrary detention. They may be detained for several months or years, or even indefinitely, particularly in countries which have a policy of mandatory detention or do not prescribe a maximum period of detention. The imprisonment of a migrant or an asylum seeker for a prolonged period of time, in conditions that are sometimes found to be even worse than in the regular prisons, constitutes a punishment on a person who has not committed any crime (A/HRC/27/48/Add.2, para. 75).

77. Other international human rights mechanisms have similarly raised concerns about the excessive length of detention of migrants, the harsh conditions of their detention and the lack of procedural safeguards to ensure that detention is an appropriate and proportionate measure (A/68/261, para. 46). The Working Group reiterates that the detention of asylum seekers and irregular migrants should be a last resort and permissible only for the shortest period of time. Any necessary detention should take place in appropriate, sanitary, non-punitive facilities, and should not take place in prisons. The inability of the authorities to carry out the expulsion of an individual can never justify indefinite detention.

C. Protective custody

78. The present section addresses the practice of keeping girls and women in detention for the purpose of protecting them from risks of serious violence. The Working Group has previously addressed in its annual report protective custody of women and girls who may be detained for life. That form of deprivation of liberty is highly gendered in its reach, remit and application. In some countries, women and girls are placed in custody due to the risk of

gender-based violence, such as honour crimes, and their release may be conditional upon the consent of a male relative and/or a guarantor (see A/HRC/20/16/Add.1).

79. There will typically be no legal basis for the detention, procedural guarantees will not be observed, and the detention will constitute discrimination. The Working Group recalls the views of the United Nations treaty bodies and the Special Rapporteur on violence against women, its causes and consequences, that the practice of protective custody should be eliminated and replaced with alternative measures ensuring the protection of women without jeopardizing their liberty.³

IV. Conclusions

80. The Working Group, in the fulfilment of its mandate, welcomes the cooperation it has received from States with regard to the responses by the Governments concerned concerning cases brought to their attention under its regular procedure. In 2013, the Working Group adopted 60 opinions concerning 431 persons in 39 countries. It also sent 110 urgent appeals to 37 countries concerning 680 persons.

81. The Working Group welcomes the invitations extended to it to pay official visits to countries. The Working Group conducted official visits in 2013 to Brazil, Greece, Hungary and Morocco. In response to its requests to visit countries, the Working Group has received invitations from the Governments of Argentina (for a follow-up visit), Azerbaijan, Burkina Faso, Germany, India, Italy, Japan, Libya, Malta, Nauru, Spain and the United States of America. It has also requested to be invited to an additional 16 countries. The Working Group reiterates its belief that its country visits are essential for the fulfilment of its mandate. For Governments, the visits provide an excellent opportunity to show developments and progress in ensuring respect for human rights, including the crucial right not to be arbitrarily deprived of liberty.

82. The Working Group reiterates that timely responses to its letters of allegations under its regular procedure with full disclosure from Member States furthers the cause of objectivity in the rendering of the Working Group's opinions. The Working Group regrets that, in some cases, Governments do not provide responses, or limit their replies to general information or merely affirm the non-existence of arbitrary detention in the country or refer to the constitutional norms preventing arbitrary detention from occurring, without making direct reference to the specific allegations transmitted.

83. In its deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law (A/HRC/22/44, sect. III), the Working Group restated its constant jurisprudence on the prohibition of all forms of arbitrary deprivation of liberty, and demonstrated that it is general practice accepted as law, constituting customary international law and a peremptory norm (*jus cogens*). The prohibition of arbitrariness in the deprivation of liberty requires a strict review of the lawfulness, necessity and proportionality of any measure depriving anyone of their liberty, which can arise at any stage of legal proceedings. The prohibition of arbitrary deprivation of liberty applies without territorial limitations, both with

³ See, e.g., concluding observations of the Committee against Torture: Jordan, CAT/C/JOR/CO/2; concluding comments of the Committee on the Elimination of All Forms of Discrimination against Women: Jordan, CEDAW/C/JOR/CO/4; concluding observations of the Committee on the Rights of the Child: Jordan, CRC/C/15/Add.125; report of the Special Rapporteur on violence against women, its causes and consequences, mission to Jordan, A/HRC/20/16/Add.1.

respect to the duties on States where they have effective control and to acts by their agents abroad. International law does not accept "act of state" limitations on human rights obligations. In the interactive dialogue at the twenty-second session of the Human Rights Council, States gave general support for the conclusions of the deliberation. In its resolution 20/16, the Council encouraged all States to respect and promote the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful, in accordance with their international obligations, and requested the Working Group to prepare and present to it before the end of 2015 draft basic principles and guidelines on remedies and procedures relating to that right, with the aim of assisting Member States in complying therewith. Deliberation No. 9 has been cited as one source on the approach to identification of customary international law by Sir Michael Wood in his first (A/CN.4/663, para. 53) and second reports (A/CN.4/672, paras 41.8 and 76.6) on formation and evidence of customary international law submitted to the International Law Commission.

84. The Working Group has prepared a specific report on national, regional and international laws, regulations and practices on the right to challenge the lawfulness of detention before a court (A/HRC/27/47) and will hold a consultation with stakeholders on 1 and 2 September 2014 to solicit input on the draft basic principles and guidelines, with a view to presenting them to the Human Rights Council in 2015.

85. Judges should always be independent and impartial. In contrast, two of the core values of a military officer are obedience and loyalty to her or his supervisors. Under international law, military tribunals can only be competent to try military personnel for military offences.

86. Military courts should not try military officers if civilians have also been indicted in the case and if civilians are among the victims. All sentences issued by military courts should be reviewed by a civil court, even if they have not been appealed. Military courts should never be competent to impose the death penalty.

V. Recommendations

87. The Working Group recommends that States:

(a) Enforce and protect the right to liberty of every human being under customary international law;

(b) Ensure that the guarantees available against arbitrary arrest and detention are extended to all forms of deprivation of liberty, including house arrest; re-education through labour; prolonged periods of curfew; detention of migrants and asylum seekers; protective custody; detention for rehabilitation or treatment; detention in transit areas; and border control checkpoints;

(c) Ensure that persons are not held in pretrial detention for periods longer than those prescribed by law or proportionate, and that they are promptly brought before a judge;

(d) Remedy arbitrary detention, mainly by immediate release and compensation as required by international human rights conventions and customary international law, and assist the Working Group in the follow-up to its opinions in individual cases.

88. All measures of detention should be justified, adequate, necessary and proportional to the aim sought.

89. All persons subjected to a measure of detention should benefit at all stages from access to a lawyer of her or his choice and to effective legal assistance and representation.

90. All detainees should benefit from all minimum procedural guarantees, including the principle of equality of arms; the provision of adequate time and facilities for the preparation of the defence; proper access to evidence; and guarantees against self-incrimination.

91. The practice of protective custody should be eliminated and replaced with alternative measures that ensure the protection of women and girls without jeopardizing their liberty. As part of efforts to achieve that end, awareness should be raised regarding the practice of protective custody. The Working Group encourages States, civil society organizations and other stakeholders to submit to the Working Group information on how frequently that practice occurs.

92. The Working Group requests the Human Rights Council to consider the adoption of a set of principles to be applied to military courts.

93. The Working Group recommends that States ensure that preventive detention must comply with international law and be proportionate and justified by compelling reasons, and is subject to regular periodic review by an independent judicial body.

94. Detention of asylum seekers and irregular migrants shall be a last resort and permissible only for the shortest period of time. Alternatives to detention should be sought whenever possible and the legality of detention must be open to challenge before a court and subject to regular review within fixed time limits.



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Agenda item 3

Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

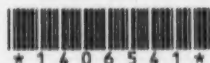
Report of the Working Group on Arbitrary Detention

Addendum

Opinions adopted by the Working Group on Arbitrary
Detention at its sixty-sixth, sixty-seventh and sixty-eighth
sessions

Chair-Rapporteur: Mads Andenas

GE.14-06541



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The opinions below were adopted by the Working Group on Arbitrary Detention at its sixty-sixth, sixty-seventh and sixty-eighth sessions, held in May, August and November 2013. Statistical data on the opinions are contained in the report of the Working Group (A/HRC/27/48).

Opinion No. 1/2013 (Tunisia)	A/HRC/WGAD/2013/1
Opinion No. 2/2013 (Barbados)	A/HRC/WGAD/2013/2
Opinion No. 3/2013 (Morocco)	A/HRC/WGAD/2013/3
Opinion No. 4/2013 (Uzbekistan)	A/HRC/WGAD/2013/4
Opinion No. 5/2013 (Turkmenistan)	A/HRC/WGAD/2013/5
Opinion No. 6/2013 (Turkey)	A/HRC/WGAD/2013/6
Opinion No. 7/2013 (Romania)	A/HRC/WGAD/2013/7
Opinion No. 8/2013 (Russian Federation)	A/HRC/WGAD/2013/8
Opinion No. 9/2013 (Sri Lanka)	A/HRC/WGAD/2013/9
Opinion No. 10/2013 (United States of America)	A/HRC/WGAD/2013/10
Opinion No. 11/2013 (Tajikistan)	A/HRC/WGAD/2013/11
Opinion No. 12/2013 (Bahrain)	A/HRC/WGAD/2013/12
Opinion No. 13/2013 (Switzerland)	A/HRC/WGAD/2013/13
Opinion No. 14/2013 (Burundi)	A/HRC/WGAD/2013/14
Opinion No. 15/2013 (Comoros)	A/HRC/WGAD/2013/15
Opinion No. 16/2013 (Panama)	A/HRC/WGAD/2013/16
Opinion No. 17/2013 (Cuba)	A/HRC/WGAD/2013/17
Opinion No. 18/2013 (Islamic Republic of Iran)	A/HRC/WGAD/2013/18
Opinion No. 19/2013 (Morocco)	A/HRC/WGAD/2013/19
Opinion No. 20/2013 (Argentina)	A/HRC/WGAD/2013/20
Opinion No. 21/2013 (Mexico)	A/HRC/WGAD/2013/21
Opinion No. 22/2013 (Turkmenistan)	A/HRC/WGAD/2013/22
Opinion No. 23/2013 (France)	A/HRC/WGAD/2013/23
Opinion No. 24/2013 (Cambodia)	A/HRC/WGAD/2013/24
Opinion No. 25/2013 (Morocco)	A/HRC/WGAD/2013/25
Opinion No. 26/2013 (Viet Nam)	A/HRC/WGAD/2013/26
Opinion No. 27/2013 (United Arab Emirates)	A/HRC/WGAD/2013/27
Opinion No. 28/2013 (Islamic Republic of Iran)	A/HRC/WGAD/2013/28
Opinion No. 29/2013 (Tunisia)	A/HRC/WGAD/2013/29

Opinion No. 30/2013 (Uzbekistan)	A/HRC/WGAD/2013/30
Opinion No. 31/2013 (Paraguay)	A/HRC/WGAD/2013/31
Opinion No. 32/2013 (Saudi Arabia)	A/HRC/WGAD/2013/32
Opinion No. 33/2013 (Viet Nam)	A/HRC/WGAD/2013/33
Opinion No. 34/2013 (Democratic People's Republic of Korea)	A/HRC/WGAD/2014/34
Opinion No. 35/2013 (Democratic People's Republic of Korea)	A/HRC/WGAD/2013/35
Opinion No. 36/2013 (Democratic People's Republic of Korea)	A/HRC/WGAD/2013/36
Opinion No. 37/2013 (Bangladesh)	A/HRC/WGAD/2013/37
Opinion No. 38/2013 (Cameroon)	A/HRC/WGAD/2013/38
Opinion No. 39/2013 (Egypt)	A/HRC/WGAD/2013/39
Opinion No. 40/2013 (Uzbekistan)	A/HRC/WGAD/2013/40
Opinion No. 41/2013 (Libya)	A/HRC/WGAD/2013/41
Opinion No. 42/2013 (United Arab Emirates)	A/HRC/WGAD/2013/42
Opinion No. 43/2013 (Syrian Arab Republic)	A/HRC/WGAD/2013/43
Opinion No. 44/2013 (Saudi Arabia)	A/HRC/WGAD/2013/44
Opinion No. 45/2013 (Saudi Arabia)	A/HRC/WGAD/2013/45
Opinion No. 46/2013 (Saudi Arabia)	A/HRC/WGAD/2013/46
Opinion No. 47/2013 (Bolivarian Republic of Venezuela)	A/HRC/WGAD/2013/47
Opinion No. 48/2013 (Sri Lanka)	A/HRC/WGAD/2013/48
Opinion No. 49/2013 (Myanmar)	A/HRC/WGAD/2013/49
Opinion No. 50/2013 (Myanmar)	A/HRC/WGAD/2013/50
Opinion No. 51/2013 (Bangladesh)	A/HRC/WGAD/2013/51
Opinion No. 52/2013 (Islamic Republic of Iran)	A/HRC/WGAD/2013/52
Opinion No. 53/2013 (Jordan)	A/HRC/WGAD/2013/53
Opinion No. 54/2013 (Morocco)	A/HRC/WGAD/2013/54
Opinion No. 55/2013 (Islamic Republic of Iran)	A/HRC/WGAD/2013/55
Opinion No. 56/2013 (Myanmar)	A/HRC/WGAD/2013/56
Opinion No. 57/2013 (Djibouti, Sweden and the United States of America)	A/HRC/WGAD/2013/57
Opinion No. 58/2013 (Mexico)	A/HRC/WGAD/2013/58

Opinion No. 59/2013 (Azerbaijan)

A/HRC/WGAD/2013/59

Opinion No. 60/2013 (United Arab Emirates)

A/HRC/WGAD/2013/60

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Agenda item 3

Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Report of the Working Group on Arbitrary Detention

Addendum

Mission to Greece*

Summary

The Working Group on Arbitrary Detention undertook a visit to Greece from 21 to 31 January 2013.

In the present report, the Working Group commends the Government of Greece for a number of positive initiatives, particularly legislative reforms, to improve the situation of deprivation of liberty. It found positive developments in, inter alia, the area of migration and asylum. The Working Group also notes the work carried out by the police and the Hellenic Coast Guard in combating trafficking in human beings.

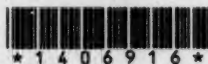
During its visit, the Working Group found that the legislative developments were not always followed by effective implementation in practice.

With regard to criminal justice, there is a constitutional provision that establishes that pretrial detention may not exceed a period of one year in the case of felonies and six months in the case of misdemeanours. The Working Group, however, observed the relatively long periods spent by the accused in pretrial detention, sometimes several years. This is one of the main reasons for the serious overcrowding in Greek prisons, which has intensified and is now a chronic problem.

The border shared with Turkey is currently one of the main points of irregular border crossings into Europe, in large part owing to its geographical location, at the

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

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south-east border of the European Union, and its proximity to countries that are, or have been, experiencing serious conflict. The Working Group found that up to 90 per cent of undocumented migrants from Asia and Africa enter the European Union via Greece. Concerning the situation of migrants in Greece, it notes that many of them are in a semi-legal status, holding expired residency permits while going through the process of renewal.

The Working Group noted with concern the policy of the Government of Greece of systematically detaining all irregular migrants detected entering Greek territory, including families and unaccompanied minors. It highlights the excessive duration of detention of both irregular migrants and asylum seekers for up to 18 months if the person refuses to cooperate or if there are delays in obtaining the necessary documentation. In many instances, refusal to cooperate or the delays in obtaining necessary documentation could not be attributed to the migrant in question but rather to the consular authorities, or to legal or practical obstacles.

The Working Group points out that the non-application of alternatives to detention, lack of effective judicial review, and the excessive length of detention may render the detention of an individual arbitrary.

In most detention facilities visited by the Working Group, conditions were well below international human rights standards, including in terms of severe overcrowding. In detention centres for asylum seekers, the conditions are often appalling and unhygienic, and facilities were in a poor state of repair.

During its visit, the Working Group also learned about numerous round-up operations where the police would detain foreigners and members of the Roma community who are Greek citizens and release them soon after without charge. In this regard, the Working Group recalls that any detention on discriminatory grounds constitutes arbitrary detention, and furthermore, that detention without any legal basis also renders the detention arbitrary.

Annex

[English only]

Report of the Working Group on Arbitrary Detention on its visit to Greece

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1 – 3	4
II. Programme of the visit.....	4 – 9	4
III. Institutional and legal frameworks.....	10 – 41	5
A. Political, administrative and judicial structure	10 – 16	5
B. International human rights obligations	17 – 20	5
C. National legislation.....	21 – 22	6
D. Judicial guarantees.....	23 – 27	6
E. Deprivation of liberty of mentally ill persons.....	28 – 30	7
F. General background on migration	31 – 41	7
IV. Findings	42 – 108	9
A. Positive aspects.....	42 – 45	9
B. Criminal justice	46 – 60	9
C. Detention of migrants in an irregular situation.....	61 – 80	10
D. Detention conditions.....	81 – 92	14
E. Procedural safeguards.....	93 – 102	15
F. Alternatives to detention.....	103	17
G. Unaccompanied minors.....	104 – 107	17
H. Conscientious objection.....	108	17
V. Conclusions.....	109 – 117	18
VI. Recommendations.....	118 – 134	19

I. Introduction

1. The Working Group on Arbitrary Detention conducted an official visit to Greece from 21 to 31 January 2013, following an invitation received from the Government. The delegation was composed of Mads Andenas (Norway) and Vladimir Tochilovsky (Ukraine). The members of the Working Group were accompanied by the Secretary of the Working Group, another staff member of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and two interpreters.
2. The Working Group thanks the Government of Greece for its invitation to the Working Group and for its full cooperation throughout the visit. It also thanks the Office of the United Nations High Commissioner for Refugees (UNHCR) and the representatives of Greek civil society for their support during the visit.
3. Throughout the visit and in all respects, the Working Group enjoyed the fullest cooperation of the Government and all authorities contacted, which provided the delegation with all the information required and arranged all the meetings it requested.

II. Programme of the visit

4. The Working Group held various meetings with representatives of the State, and expresses its appreciation for the valuable information they provided. It met with senior authorities from the executive, legislative and judicial branches of the State, including the Minister for Public Order and Citizens' Protection, the Alternate Minister of the Interior, the Deputy Minister for National Defence, the Secretary-General for Anti-Crime Policy of the Ministry of Justice, Transparency and Human Rights, the Director of the First Reception Service, the Chief of the Hellenic Coast Guard of the Ministry of Shipping, Maritime Affairs and the Aegean; the Head of the Legal Department of the Ministry of Foreign Affairs, the Head of the Department on Protection of Refugees and Asylum of the Ministry of Labour, Social Security and Welfare, and senior officials of various ministries and local authorities on the Aegean island of Samos, in Orestiada and in Thessaloniki.
5. The Working Group also met with Members of Parliament, the Ombudsman, representatives of the National Commission for Human Rights, and representatives of bar associations, international organizations and Greek civil society.
6. With regard to the judiciary, the Working Group met with a Magistrate of the Supreme Court of Civil and Penal Law (Areios Paghos), the Vice-Public Prosecutor of the Supreme Court of Civil and Penal Law, the President of the High Court of Athens, the Head of the Public Prosecutors Office of the High Court of Athens, the Vice-Public Prosecutor of the Court of Appeals of Athens and with first instance judges and prosecutors.
7. The Working Group visited a number of places where persons are deprived of their liberty. It visited the Korydallos Prison, including its psychiatric ward, in Athens, the local prison of Thessaloniki and the Komotini Prison in the Rodopi regional unit, as well as police holding cells in Athens, on the island of Samos, in Alexandroupolis and Orestiada. It also visited a number of detention facilities for irregular migrants and asylum seekers, including Thessaloniki Detention Centre, Filakio Detention Centre and Soufli Border Guard Station in the Evros region bordering Turkey, and Komotini Detention Centre in the neighbouring Rodopi regional unit. It further met with and interviewed detainees in all above-mentioned facilities, in private and without the presence of guards or witnesses.

8. The Working Group points out that it was allowed to visit all places of detention that it had requested.
9. The Working Group also met with representatives of United Nations agencies. The visit concluded with a debriefing with the Government on the preliminary observations of the Working Group, and a press conference.

III. Institutional and legal frameworks

A. Political, administrative and judicial structure

10. Greece is a constitutional republic based on a parliamentary democracy and on the principle of separation of powers. Its 300-seat Parliament (Vouli) is unicameral.
11. The country has a solid judiciary, composed of independent magistrates and judges. The Constitution guarantees the independence of judges and prosecutors. The judicial system consists of three levels of criminal courts - first instance judges (divided into misdemeanour and felony divisions), appeals courts and the Supreme Court of Justice - as well as three levels of civil courts - first instance judges, appeals courts and the Supreme Court of Justice - and an examining magistrate system.
12. There is a military jurisdiction, not only for military offences, but for any offence against the Penal Code, the Military Penal Code or any special penal legislation committed by a member of the armed forces (army, navy or air force), including the coast guard. It is composed of military judges and military prosecutors. Defence lawyers are civilians. Sentences issued by military courts are served in civilian prisons.
13. The Ministry of Justice, Transparency and Human Rights is responsible for the correctional system. All police forces are under the authority of the Ministry of Public Order and Citizens' Protection and the Ministry of Justice are also responsible for the protection of migrants.
14. The Greek Ombudsman and the National Commission for Human Rights are mandated to protect and promote human rights. There are five deputy ombudsmen at the Ombudsman's office: one for human rights; one for children's rights; one for health care and social welfare; one for State-citizen relations; and one for quality of life issues.
15. The National Commission for Human Rights, created in 1998, is an independent advisory body directly subject to the Prime Minister, operating in accordance with the Paris Principles. It has "A" status accreditation with the International Coordinating Committee of National Human Rights Institutions. The Commission is composed of representatives of labour unions, political parties civil society organizations and of six ministries. Committee members are requested to, inter alia, submit comments on bills.
16. The Prison Inspectorate is a semi-autonomous body headed by a judge that inspects prisons and makes recommendations.

B. International human rights obligations

17. According to article 28, paragraph 1 of the Constitution, international treaties ratified by Greece are an integral part of domestic Greek law, and have precedence over any conflicting provision of the law.
18. With regard to the protection of human rights, Greece has ratified most of the major international human rights instruments, including the International Covenant on Civil and

Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Optional Protocol thereto.

19. Greece is also a party to the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto. It is not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Forced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights or the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

20. Greece has adhered to the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention relating to the Status of Refugees and the Protocol thereto, the Convention relating to the Status of Stateless Persons, the Geneva Conventions and the Protocols additional thereto, the fundamental conventions of the International Labour Organization, the Rome Statute of the International Criminal Court and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

C. National legislation

21. The Constitution guarantees respect for and protection of the value of the human being (art. 2); full protection of life, honour and liberty, irrespective of nationality, race or language, religious or political beliefs for all persons living within Greek territory (art. 5, para. 2); and the inviolability of personal liberty (art. 5, para. 3). Furthermore, the Constitution provides for freedom of opinion, expression, speech and the press.

22. The Constitution prohibits torture, any bodily maltreatment, impairment of health or the use of psychological violence, and any other offence against human dignity, which is punishable as provided by law (art. 7, para. 2). Every person is entitled to receive legal protection by the courts and may plead before them his or her views concerning personal rights or interests, as specified by law (art. 20, para. 1). The right of a person to a prior hearing also applies in any administrative action or measure adopted at the expense of the person's rights or interests (art. 20, para. 2).

D. Judicial guarantees

23. The Constitution prohibits arbitrary arrest and detention: no person may be arrested or imprisoned without a reasoned judicial warrant, which must be served at the moment of arrest or detention pending trial, except when caught in the act of committing a crime (art. 6, para. 1). The Constitution also guarantees respect for the right to a fair trial.

24. Trials are public, although judges may order restrictions on press coverage. Defendants have the right to counsel. Strict rules of evidence apply in court, and witnesses are subject to cross examination. Bail is sometimes available for those who have committed minor offences, including minor drug offences. Depending on the seriousness of the offence, a detainee may be held in remand for up to one year. Detainees are not allowed to make or receive telephone calls, but may write and receive letters. They are allowed one visit a week, and have unlimited access to their defence lawyer.

25. Defendants enjoy the presumption of innocence and may appeal a court decision to a higher court. Juries are generally used in felony cases, although the law allows for the denial of the right to a jury in cases of violent terrorism. Defendants may present witnesses

and evidence on their behalf, and question witnesses testifying against them. They have access to evidence relevant to their cases held by the authorities.

26. According to article 87 of the Penal Code and article 371.4 of the Criminal Procedural Code, the term of pretrial detention and the time between the arrest and the order of pretrial detention is deducted from the sentence.

27. Persons who have been detained on remand and subsequently acquitted are entitled to request compensation if it has been established in the proceedings that they did not commit the criminal offence for which they were detained (Criminal Procedure Code, art. 533.2).

E. Deprivation of liberty of mentally ill persons

28. A specific and complete legislative framework is in force that allows for involuntary placements in psychiatric institutions (law 2071/1992, arts. 96 to 99). A programme on mental health reform, initiated in 1994, had the main outcome of abolishing most psychiatric institutions. Most chronic patients now live in small residences across the country. Psychiatric units are integrated into general hospitals.

29. The number of involuntary placement in psychiatric institutions has, however, dramatically increased in recent years, mainly as a consequence of the economic and financial crisis.

30. Patients may only be interned in psychiatric institutions by order of a judge. Judges must support their decision on the basis of an analysis conducted jointly by an external psychiatrist and a medical doctor from the psychiatric institution. According to law, the detention is to be reviewed every two years, although this rarely occurs in practice. The patient may only leave the institution when a release order has been issued by a judge. Patients whose treatment has been completed receive follow-up attention from their doctors.

F. General background on migration

31. Greece has 18,000 km of coast and 9,000 islands. Its border with Turkey is currently one of the main points of irregular border crossings into Europe, in large part due to its geographical location, at the south-east border of the European Union, and its proximity with countries that are, or have been, experiencing serious conflict. It is estimated that up to 90 per cent of undocumented migrants from Asia and Africa enter the European Union via Greece. In 2012, 421 people were put in detention in a single day for having illegally crossed the border. A barbed wire fence was subsequently built along 12.5 km of the country's mainland borders with Turkey in the Prefecture of Evros.

32. Since the visit of the Working Group to Greece, the European Union has agreed on new rules; for example, Regulation 604/2013 came into force on 1 January 2014. The regulation maintains the main criteria for defining the Member State responsible for examining an application for international protection, and therefore continues to overburden the Greek asylum system.

33. From 1 August to 31 December 2012, 3,280 immigrants and 38 traffickers were detained at the eastern sea borders. Some 1,528 were from Afghanistan and 1,067 from the Syrian Arab Republic. In the Evros region, 36,000 people entered Greek territory illegally in 2010, an increase over the 28,000 in 2011 and the 23,000 in 2012.

34. Persons detained for illegal entry into Greek territory are subjected to screening by the police force, with the support of the European agency Frontex, in order to establish their identity and country of origin, and to take photographs and fingerprints. They are subjected to a medical examination and, according to the laws of the European Union and of Greece, are informed about their rights. The police force concentrates its efforts on dismantling traffic networks.

35. Law No. 3386/2005 governs migration, regulating the entry, residence and social integration of third-country nationals in Greece, as well as issues raised by migrants entering in an irregular situation. According to article 83.1 of the law, illegal entry is a criminal offence punishable by imprisonment of at least three months and a fine of at least €1,500. Law No. 3907/2011 was promulgated to simplify the repatriation procedures of those already in Greek territory. According to the Government, national legislation is aligned fully with European Union laws and directives.

36. With regard to the situation of migrants in Greece, the Working Group was informed that many of them had semi-legal status, holding expired residency permits while undergoing the process of permit renewal.

37. At the time of the visit by the Working Group, no fair and effective asylum determination procedures system was in place. Since the visit, however, the asylum system has undergone many changes. A new asylum service and an appeals authority were established under Law No. 3907/2011, which came into force on 26 January 2011. The Law provides for the establishment of a first reception service and the adaptation of national legislation to European Union Directive 2008/115/EC on the return of irregular migrants. The Government reported that the new asylum service, the appeals authority and the first reception service are now fully operational. The new asylum service, which commenced its activities on 7 June 2013, is the first autonomous facility in Greece to be in charge of examining international protection claims. It comprises a central office, in Athens, and 13 regional asylum offices.

38. The Working Group was informed that, at the Attika Police Directorate in Athens, only 20 applications for asylum a week were registered by the authorities.

39. During the summer of 2012, Greece launched operation Aspida ("shield") on the land border with Turkey, and operation Xenios Zeus, a crackdown on irregular migrants residing in Athens and elsewhere. The sweep operations in the context of operation Xenios Zeus had led to mass arrests and detention, including of migrants in a regular situation and others who had been living and working in Greece for several years. The Working Group also learned that the police had detained members of the Roma community with Greek citizenship in the course of such operations, and had released them soon after without charge. In this regard, the Working Group recalls that any detention on discriminatory grounds constitutes arbitrary detention, and that detention without any legal basis also renders the detention arbitrary.

40. According to the Government, the above-mentioned police operations had had a positive impact on the protection of the human rights of those irregularly entering and residing in Greece, since they allowed the police and other relevant services to evaluate and handle more effectively the needs of immigrants in an irregular situation, and to offer them shelter in places with decent conditions while their cases were being examined.

41. Although the Government considers that the exact number of those who reside illegally in Greece cannot be estimated, other sources estimate that there are around 470,000 migrants in an irregular situation living in the country. For the overwhelming majority, Greece is not their final destination, but merely their point of entry to the European Union and the Schengen zone. Many irregular migrants had, however, remained in Greece because they were prevented from moving on to other European countries owing

to European Union regulations. The Dublin system prohibited any improvement of balancing the protection of asylum seekers and the burden put on Member States. While Regulation 604/2013 is considered a pivotal moment for having established the Common European Asylum System, how the responsibility for refugee protection is shifted from the southern and eastern regions of the European Union to other Member States remains to be seen.

IV. Findings

A. Positive aspects

42. The Working Group commends the Government of Greece for the positive efforts it has made, particularly through legislative reforms, to improve the situation of deprivation of liberty in Greece. In the area of migration and asylum, such positive initiatives include, in particular, the adoption of Presidential Decree No. 114/2010 amending the previous legislation on the asylum procedure, and setting, for a transitional period, appropriate standards and safeguards for the fair and efficient examination of applications for asylum; and the adoption of a comprehensive law (No. 3907/2011) providing for the establishment of a new asylum service independent of the police, to take over gradually full responsibility for asylum issues.

43. In 2011, a new first reception service was established as an autonomous body reporting to the Ministry of Public Order and Citizens' Protection. Its main task is to establish first reception centres at the borders according to international standards. When undocumented migrants arrive in the country, the service prepares a needs assessment; migrants are identified, and their origin and nationality determined. All persons arriving are sorted into a pre-established category; asylum seekers are identified then registered. New arrivals will be informed on their lodgings, and their rights and duties. Undocumented migrants stay at the first reception centres solely for a short period only (a maximum of 15 days, with the possible extension of 10 days).

44. The Working Group also notes the work carried out by the police and the Hellenic Coast Guard in combating trafficking in human beings.

45. Despite these positive achievements, the Working Group notes a number of issues that are of particular concern and draw the Government's attention to them. In the course of its visit, the Working Group found that legislative developments are not always followed up by effective implementation in practice.

B. Criminal justice

46. The Constitution requires a judicial warrant for an arrest, except when it is made during the commission of a crime (*in flagrante delicto*). This provision is usually respected. The law also prohibits arbitrary arrest orders.

47. The police are responsible for law enforcement and maintaining order. They are required to bring detainees before an examining magistrate within 24 hours. The magistrate has a maximum of 72 hours to issue a detention warrant or to order the detainee's release, unless special circumstances justify a two-day extension of the time limit.

48. Article 18 of the Penal Code divides offences into felonies, misdemeanours and petty offences. In general terms, felonies are punished with penitentiary sentences,

misdeemeanours with correctional punishment and petty offences by fines or pecuniary penalties.

49. Offences are prosecuted exclusively by the public prosecutor. In the case of a felony, the public prosecutor orders an investigation, which is carried out by an investigating judge. In the case of a misdemeanour, the public prosecutor orders a preliminary summary investigation, carried out by an investigating official. A direct call to appear before the court is provided for petty offences.

50. Article 6, paragraph 4 of the Constitution establishes that pretrial detention may not exceed a period of one year in the case of felonies and six months in the case of misdemeanours. In exceptional cases, the maximum duration may be extended by six (if the sanction is 20 years of imprisonment or more) or three months, respectively. The article also provides that exceeding the maximum duration of detention pending trial by successive application of this measure for separate acts referring to the same case is prohibited.

51. A panel of judges may release detainees pending trial, either with or without bail. The Working Group observed, however, relatively long periods spent by the accused in pretrial detention, sometimes as much as several years, despite the above-mentioned constitutional provision. Courts are reportedly overburdened and understaffed. Many judges call work stoppages to protest against salary and pension cuts, which further increases the backlog. Lawyers complained before the Working Group that judges make excessive use of pretrial detention, which is often too long. The Working Group found that pretrial detainees made up 31 per cent of those incarcerated. With regard to the police, a report issued in 2010 by the Internal Affairs Unit noted an increase in corruption cases.

52. According to the practice of the Working Group, the non-application of alternatives to detention, lack of effective judicial review, and the excessive length of detention may render the detention of an individual arbitrary. The Working Group was informed that, although alternative sentencing for non-violent offenders was available, courts did not use their prerogative.

53. Defendants have the right to legal counsel. In felony cases, the bar association is to provide defendants with a lawyer if they prove that they cannot afford legal counsel. Defendants brought to court on the day following the alleged commission of a misdemeanour may be tried immediately under an expedited procedure. Legal safeguards, including representation by legal counsel, apply in such procedures; however, the Working Group received allegations that such procedures may undermine the basic rights of defendants owing to the brevity and rapidity of the trial. The Working Group received information that the short time available limits the ability of defendants to present an adequate defence. Government-held evidence is not made available consistently. In addition, the law imposes excessive restrictions on appeals.

54. According to the provisions of the national legislation, the presence of a lawyer is required by law at every stage of a penal procedure. The Working Group, however, received allegations that police agents often fail to inform detainees about their rights to contact family members and to consult a lawyer of their choice. Police officers often question suspects without giving them access to legal counsel.

55. Free legal defence is guaranteed for penal and civil cases, but not for administrative ones. Lawyers complained that the fees were very low, sometimes not compensating for their travel expenses, and that they were paid with considerable delay.

56. National law provides for proper safeguards for persons charged with criminal offences at the pretrial stage. Article 33 of Ministerial Decree No. 58819/7.4.2003 stipulates the procedures followed whenever a detainee cannot afford to exercise her or his right to a defence. The Working Group, however, found serious discrepancies between the

legal requirements and the actual application of some of these safeguards. For instance, according to national law, anyone charged with a felony has the right to have assigned legal assistance without payment, if the person charged does not have sufficient means to pay for it. In felony cases, the bar association is to provide the defendants who prove that they cannot afford legal counsel with a lawyer. Most detainees indeed indicated that they did not have a lawyer because they could not afford one. Very few were aware of the right to free legal assistance.

57. A number of detainees who had chosen to engage a lawyer at their own expense complained that the lawyers simply took their money (between €200 and €600) then disappeared. Information leaflets on the rights of detainees found in detention facilities were very vague and referred only to the detainee's right to contact a lawyer.

58. The presence of an interpreter is legislated. According to the Government, efforts were being made to cover the needs of interpretation in all relevant services by interpreters appointed either by the State or by non-governmental organizations. The Working Group, however, received complaints from foreigners that they did not have access to a court-appointed interpreter.

59. The Working Group noted with particular concern the situation of detainees after round-up operations carried out by police raids in the streets and public places. In many cases, these individuals had been arrested following a racial profile; they were not informed about their rights or about the reason for their detention. In police stations, they were not entitled to inform their relatives or to contact a defence lawyer.

60. The Working Group also received allegations that Roma experienced difficulties in gaining access to justice, and faced long delays in civil cases. Some Roma alleged having been victim of discriminatory attitudes and language directed against them in court.

C. Detention of migrants in an irregular situation

61. The detention of migrants is regulated by Law No. 3386/2005, in the case of those detained upon entry at an external border, and Law No. 3907/2011, which implements the European Union Returns Directive for those detained while already residing in Greece. The Working Group noted that Law No. 3907/2011, if properly implemented, would provide more safeguards for migrants than Law No. 3386/2005, because it included the provision of alternatives to detention.

62. Law No. 3386/2005 allows for the detention of irregular migrants pending their deportation if they have infringed the provisions of the said law (art. 76.3). Law No. 3907/2011 provides for migrants who are subject to return procedures to be detained pending their return and enforcement of the removal procedure, unless other sufficient, less coercive measures can be implemented in a specific case (art. 30.1). During its visit, however, the Working Group learned that, in practice, no "less coercive" measures exist; migrants are routinely detained also under Law No. 3907/2011. In most cases, the authorities consider that being in an irregular situation automatically constitutes sufficient reason for detention.

63. Law No. 4075/2012 amended Presidential Decree 114/2010 and Law No. 3386/2005, providing for migrants and asylum seekers to also be detained if they represent "a danger to public health" if they are "suffering from an infectious disease", "belong to groups vulnerable to infectious diseases" or are living in conditions that do not meet "minimum standards of hygiene". The Working Group concurs with the Special Rapporteur on the human rights of migrants that these measures are discriminatory and target the most vulnerable migrants, and lead to even more stigmatization. Furthermore, the majority of the

medical problems of migrants in detention are caused by or directly linked to their conditions of detention in Greece.

64. The police conduct large-scale round-up operations and temporarily detain hundreds of foreigners, sometimes in crowded and dirty conditions, while determining their residency status. The Working Group is aware of the recent findings of the Special Rapporteur on the human rights of migrants in relation to sweep operations in the context of operation Xenios Zeus, which had led to widespread detention of migrants in different parts of the country, many of whom have lived and worked in Greece for years.¹ The operation was conducted in public places, in particular in buses and metro stations. Between August and November 2012, 54,751 foreigners, including tourists, were temporarily detained. It was alleged that detention was motivated by the physical appearance of these individuals. Of that number, 4,000 foreigners were found to be in an irregular migratory situation, while the others were released.

65. Some foreigners complained to the Working Group about the deliberate destruction of their residence permits by police agents during routine identity checks in the street or during house searches.

66. The Working Group deeply regrets the policy the Government of systematically detaining all irregular migrants detected entering the territory of Greece, including families and unaccompanied children, as well as the sweep operations and subsequent detentions in the context of operation Xenios Zeus. Owing to limited detention capacity, in some parts of the country migrants are released relatively quickly and issued with an order to leave the country. This is particularly the case for families with children arriving in the Aegean islands. Several pre-removal centres were built in 2012 and 2013, and there are plans to build more, to increase the detention capacity in the country to 10,000 persons. The construction of these centres is partly financed by the European Return Fund.

67. The Working Group expresses its concern that the above situation will lead to long-term detention for most, or even all, migrants in an irregular situation detected in Greece. According to the national plan of action on asylum and migration management elaborated in 2010, the new policy will be implemented in order to “send a strong signal to third-country nationals willing to illegally enter Greece”; to “warn all immigrants who do not fall under the status of international protection that they will be arrested, detained and returned to the countries of origin”.

68. The Working Group regrets the excessive duration of detention of migrants – six months, which may be extended to up to 18 months if the person refuses to cooperate or if there are delays in obtaining necessary documentation (Law No. 3907/2011, arts. 30.5 and 30.6, and No. Law 3386/2005, art. 76.3), which is the maximum provided for in the European Union Directive 2008/115/EC (see para. 37 above). In many instances, the Working Group found that the refusal to cooperate or the delays in obtaining necessary documentation could not be attributed to the migrant in question but rather to the consular authorities or legal or practical obstacles. The long duration has been justified as a deterrent mechanism for other potential migrants, whether or not a durable solution can be found in each individual case.

69. In addition, owing to a change made in October 2012 to the provisions governing the maximum length of detention for asylum seekers, such individuals may now be detained for up to 18 months pending a decision on their application in Greece (Presidential Decree 114/2012). During interviews with a significant number of actual and potential

¹ A/HRC/23/46/Add.4, para. 6.

asylum seekers, the Working Group learned that these persons were often informed that they would remain in detention for 18 months if they chose to apply for asylum.

70. Furthermore, migrants whose deportation is unlikely owing to, *inter alia*, the situation in their country of origin or the non-cooperation of consular authorities, are routinely detained. This practice does not seem to comply with the purpose of detention as stated in the law, namely, to prepare for deportation. Law No. 3907/2011 states that when a reasonable prospect of removal no longer exists, detention ceases to be justified and the person concerned is to be released immediately (art. 30.4). This does not seem to be implemented in practice. Law No. 3907/2011 further provides for a mechanism to deal with non-removable irregular migrants in the form of issuance of a certificate of suspension of removal (art. 24). Significant improvements have been made by amendments to articles 74 and 99 of the Criminal Code through the provisions of Law No. 4055/2012, introducing specific time limits for the duration of detention of detainees who cannot be deported (18 months). Compliance with these provisions is monitored by a judicial body.

71. The Working Group encountered instances where persons had been detained for long periods of time pending their deportation. In many cases, countries of origin are reluctant or unwilling to accept their nationals, and the implementation of the deportation order takes a long time. Frequently, the person concerned does not have valid documentation for the issuance of a passport or entry permit.

72. The Working Group found that asylum seekers were detained until their asylum procedure had been concluded. Migrants in an irregular situation are often not informed on the grounds or the length of their detention.

73. Provisions should always be made to render detention unlawful if the obstacle for identifying immigrants in an irregular situation or carrying out removal from the territory does not lie within their sphere; for example, when the consular representation of the country of origin does not cooperate or legal considerations – such as the principle of non-refoulement barring removal if there is a risk of torture or arbitrary detention in the country of destination – or factual obstacles, such as the unavailability of means of transportation, render expulsion impossible.

74. Although the administrative detention of migrants in an irregular situation does not contravene international human rights instruments, the principle of proportionality requires that it be used as a last resort, permissible only for the shortest period of time, and that alternatives to detention be sought whenever possible.

75. The Working Group is of view that the imprisonment of a migrant or an asylum seeker for up to 18 months in conditions that are found to be even worse than in the regular prisons (see paras. 81 – 92 below) could be regarded as punishment imposed on a person who has not committed any crime. This would be a serious violation of the principle of proportionality, and may render the deprivation of liberty arbitrary. In addition, through interviews with detainees, the Working Group found that prolonged detention was often perceived by potential asylum seekers as a deterrent to discourage them from submitting an application.

76. According to domestic law, migrants in an irregular situation may be detained for up to 18 months. The maximum period of detention for asylum seekers awaiting a decision on their application was recently extended from six to up to 18 months. The Working Group encountered some instances where the obstacle for identifying or removing a particular migrant from Greek territory was not attributable to the person, including through non-cooperation of the consular representation of the third countries.

77. The Working Group also found that detainees had little or no information about why they were in detention nor of its duration. It is the position of the Working Group that

all detainees, including irregular migrants and asylum seekers, must be informed on the reasons for their detention and their rights, including the right to challenge its legality, in a language they understand, and they must have access to legal assistance.

78. As mentioned above, during its visit, the Working Group also learned about a number of round-up operations where the police would detain members of the Roma community with Greek citizens and release them soon after without charge. In this regard, the Working Group recalls that any detention on discriminatory grounds constitutes arbitrary detention, and furthermore, that detention without any legal basis also renders the detention arbitrary.

79. In 2010, the Government elaborated a plan of action on asylum and migration management (see para. 67 above), which was aimed at regulating the situation through the establishment of three different centres: first reception centres, operated by civilians; detention centres and pre-removal centres. The plan was subsequently revised in December 2012 with the objective of establishing an effective response to the migration challenges faced by the country. The revised plan focuses on the new autonomous asylum service, which reports directly to the Minister for Public Order and Citizens' Protection.

80. With regard to migrants in a regular situation, the Working Group was informed that there were 140,000 files pending at the Directorate of Naturalization and Migration of the Ministry of the Interior.

D. Detention conditions

81. Although domestic law provides for proper conditions for persons deprived of their liberty, the Working Group found that, in practice, the law is not observed. In most detention facilities visited by the Working Group, the conditions were well below those required by international human rights standards, and were severely overcrowded. In detention centres for asylum seekers, the conditions were often appalling and unhygienic, and facilities were in a poor state of repair. Long-term detention was often the result of delays due to lack of cooperation of the consular authorities of the detainee's home country.

82. In this respect, the Working Group notes the decision of January 2013 of the Criminal Court of First Instance of Igoumenitsa to acquit 15 immigrants who had escaped from a detention facility mainly to flee the appalling conditions of detention they were forced to endure.

83. The Working Group often found pretrial and convicted detainees together in the same cell, or administrative detainees, including migrants in an irregular situation and asylum seekers, held with criminal detainees, in violation of relevant national and international standards. Detainees were held for months in police holding cells and border guard stations, even though these facilities were designed for a maximum stay of 72 hours. The Working Group notes that this situation also affects the proper preparation for the trial, given that defendants cannot communicate with counsel in private.

84. Migrants in an irregular situation are detained for up to several months in various establishments, such as police stations, border guard stations and coast guard facilities, which are clearly not suitable for long-term detention. Some dedicated migration detention centres do exist, some of which are converted military camps or police academies. As common standards are not applied, the detention conditions and the safeguards available vary significantly according to the facility and the location.

85. The Working Group visited a significant number of detention facilities for irregular migrants and asylum seekers. In general terms, detention conditions in all facilities were

inappropriate. Migrants were locked in their cells for most of the day, with no activities to keep them occupied. Several of the detention centres did not have an outdoor area.

86. In some of the detention facilities, the migrants had limited access to toilets; some had no artificial lighting, so that, in winter, detainees were in the dark as of the early afternoon. Most of the detention facilities visited lacked heating and hot water, and detainees complained about insufficient and poor quality food, lack of soap and other hygiene products, and of insufficient clothing, shoes and blankets. The Working Group met with several detainees who had visible health problems but who had not received appropriate medical care. It noted the urgent need for specialized staff in each detention facility, including doctors, nurses, psychologists, social workers and interpreters.

87. The detention centres in the Evros region, particularly Fylakio, were overcrowded and run by the police. Although the detention centre for migrants and asylum seekers in Thessaloniki has a maximum capacity of 54 persons, it was holding 96 foreigners at the time of the visit of the Working Group.

88. It should be noted that, in 2012, the rate of detention of migrants in an irregular situation was 22.63 per cent lower than in 2011 (76,878 persons in 2012 against 99,368 in 2011). In 2013, detention of migrants in an irregular situation dropped by a further 44.06 per cent (with detentions down to 43,002).

89. In general terms, overcrowding in Greek prisons has increased and is now a chronic problem. At 1 September 2011, Greek prisons were at a 151.7 per cent of their maximum capacity, with 12,479 inmates (including 4,254 pretrial detainees) crammed into 8,224 available places. The number of inmates continues to rise. According to the Ministry of Justice, Transparency and Human Rights, in January 2010, Greek prisons held 11,364 inmates. By 1 November 2012, this number had risen to 13,147 (including 711 women detainees).

90. At the time of the visit of the Working Group, Thessaloniki prison held 592 inmates (including 385 in pretrial detention), even though its maximum capacity is 280. The penal population included persons of 31 different nationalities.

91. The Korydallos and Halkida prisons reportedly rejected additional inmates owing to serious overcrowding. Korydallos has room for 800 inmates, but was holding 2,345 detainees in very poor conditions of detention at the time of the visit of the Working Group. Although Komotini prison has a maximum capacity of 100 inmates, the Working Group found 327 detainees during its visit, including 74 in pretrial detention. In many detention centres, there is no separation between pretrial and convicted detainees.

92. In one police station visited in Thessaloniki, the Working Group found 10 persons detained on suspicion of having committed common offences, as well as 90 migrants in an irregular situation.

E. Procedural safeguards

93. According to the Government, representatives of UNHCR and non-governmental organizations dealing with migration issues are granted access to detention facilities where they may interact freely with migrants and provide them with legal assistance. The Working Group received information, however, that detainees were allowed limited contact with their families, limited access to legal assistance and consular services and little or no professional interpretation services.

94. In general, the detainees whom the Working Group met had little or no information in a language they could understand about the reasons for detention, its duration or the right

to challenge their detention and deportation, despite the fact that article 76.3 of Law No. 3386/2005 provides for the right to be informed about the reasons for detention in a language that the detainee understands. While some detention centres had information posted on the walls near the entrance or in booklets, information was rarely available inside the cells or anywhere else. Those who had applied for asylum often had no information about the status of their case, and others could not apply for asylum from the detention facility.

95. According to deliberation No. 5, Principle 1 of the Working Group, any asylum seeker or immigrant, when held for questioning at the border, or inside national territory in the case of illegal entry, must be informed at least orally and in a language that he or she understands of the nature of and grounds for the decision refusing entry at the border, or permission for temporary residence in the territory, that is being contemplated with respect to the person concerned. In Principle 2 of deliberation No. 5, the Working Group pointed out that any asylum seeker or immigrant must have the possibility, while in custody, of communicating with the outside world, including by telephone, fax or electronic mail, and of contacting a lawyer, a consular representative and relatives.

96. Migrants may be detained on the decision of the competent police authority (Law No. 3386/2005, art. 76.2); no automatic judicial review of the decision is provided for. Although migrants may present an objection to their detention (Law No. 3386/2005, art. 76.3 and Law No. 3907/2011, art. 30.2), it is not automatic, and no direct review of the lawfulness of the detention is provided for.

97. Moreover, objections must be submitted in writing and drafted in Greek. Access to an interpreter and lawyer is not guaranteed, which makes any objection to the detention virtually impossible, particularly given that detention and deportation orders are written in Greek.

98. Law No. 3907/2011 introduced an automatic judicial review of the legality of detention (art. 30.3); however, it regulates only the extension of detention and not the detention *per se*. The review is conducted automatically, with no reference to the specificities of each case, and the fact that the migrant has not yet been expelled constitutes sufficient grounds for the judge to extend the period of detention.

99. In its deliberation No. 5, Principle 6, the Working Group stated that the decision must be taken by a duly empowered authority with a sufficient level of responsibility and must be founded on criteria of legality established by the law. Furthermore, in Principle 8 of the same deliberation, the Working Group specified that notification of the custodial measure must be given in writing, in a language understood by the asylum seeker or immigrant, stating the grounds for the measure; it should set out the conditions under which the asylum seeker or immigrant must be able to apply for a remedy to a judicial authority, which will make a prompt decision on the lawfulness of the measure and, where appropriate, order the release of the person concerned.

100. Some of the migrants who had engaged private lawyers complained that the lawyers would simply take their money and not follow up on their cases. The Working Group heard these allegations from several migrants in different detention centres. It urges the Greek authorities to take these allegations seriously and to find a solution to the problems relating to effective legal representation of detained migrants.

101. Although the treatment of vulnerable groups (such as women, single-parent families and unaccompanied minors) is a subject of particular concern for the relevant services, the Working Group notes with concern the insufficient training and sensitization of staff in detention centres on international human rights law principles and standards, as well as on principles relating to the rights and treatment of persons deprived of their liberty, with respect to both detention conditions and safeguards.

102. Regular independent monitoring of all detention facilities is crucial to ensure the implementation of international standards. In this respect, the Working Group welcomes the recent ratification by Greece of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. The Ombudsman's office, as the designated national preventive mechanism under the Optional Protocol, should conduct regular unannounced visits to detention facilities throughout the territory of Greece, including all places where migrants are deprived of their liberty. Civil society organizations should also be guaranteed access to all places where migrants are detained.

F. Alternatives to detention

103. As noted above, despite the fact that Law No. 3907/2011 provides for the detention of migrants only when less coercive measures cannot be implemented, in practice, no such measures exist, and irregular migrants are systematically detained. The Working Group strongly urges the Greek authorities to undertake an individual assessment of the necessity of detention in each case, in accordance with international human rights standards and its own laws. Non-custodial measures should always be considered before detention.

G. Unaccompanied minors

104. Under Greek law, adolescents aged between 13 and 18 years may be held criminally responsible, even though their acts will always be considered misdemeanours rather than felonies. The law requires that educational and therapy measures be preferred instead of correctional ones. Minors are detained solely in the case of commission of serious crimes. Their detention is always under the supervision of a prosecutor. Individuals aged between 18 and 21 years are considered young adults.

105. Law No. 220/2007, which also incorporates European Union Directive 9/2003/EC, applies to unaccompanied minors, stipulating that a prosecutor is to be notified of the case whether or not the minor has submitted an asylum application. The prosecutor is appointed temporary guardian; at a later stage, in cooperation with social services and non-governmental organizations, another person, usually a social worker, will be appointed the permanent guardian.

106. During its visit, however, the Working Group found that unaccompanied minors were often not properly registered and were systematically detained. It notes with concern that the current national legislation does not provide for a statutory prohibition of the detention of minors. According to the Government, in practice, unaccompanied minors are, after some weeks in detention centres, placed under the responsibility of the Ministry of Labour, Social Security and Welfare and transferred to a guest house for minors. During its visit, however, the Working Group found that, owing to the limited capacity of existing reception facilities, unaccompanied minors often remained in detention for a prolonged period of time waiting for a place to become available.

107. Unaccompanied minors who do not apply for asylum or who were refused asylum and not granted protective status are subject to deportation or to recurrent detention.

H. Conscientious objection

108. The Working Group was informed that conscientious objectors were frequently prosecuted. On 1 February 2012, the Athens Military Court convicted Avraam Poulialis to six months of imprisonment, suspended for three years, for objecting to compulsory military service. The Court found him guilty of failing to serve compulsory military service

at any time from 11 September 1998 until 1 January 2008, when he turned 45. Mr. Pouliasis appeared personally before the Court to hear its decision, but did not file an appeal before the Military Court of Appeals. According to the Government, Mr. Pouliasis could have opted to serve alternative military service for conscientious objectors, but had chosen not to do so.

V. Conclusions

109. The Working Group recognizes that Greece is has endured a difficult economic and social period owing to the financial crisis, which has forced the Government to implement austerity measures a number of times without adequate international support.

110. The Working Group was informed of the positive legislative changes made in relation to the issue of deprivation of liberty in Greece. It encourages the Government to ensure that such developments are accompanied by effective implementation measures in strict compliance with international human rights standards. The new asylum service, appeals authority and first reception service are also positive developments.

111. With regard to criminal justice, despite the constitutional provision establishing limits for pre-trial detention (one year in the case of felonies, six months in the case of misdemeanours), the Working Group observed that accused persons often spent relatively long periods in pretrial detention, even several years. The Working Group found that this is one of the main reasons for the serious overcrowding witnessed in Greek prisons, which is now a chronic problem.

112. Arbitrary detention in Greece is particularly linked to migration and to the mass arrival of undocumented migrants. This phenomenon has placed great pressure on the police and border guards.

113. The Working Group is of the view that much remains to be done to ensure full respect for the human rights of migrants and asylum seekers in Greece. A proper network for the reception of arrivals, adequate physical and sanitary conditions in the centres and adequate procedures for repatriation seem to be lacking.

114. The Working Group found that a detention period of 18 months for undocumented migrants was excessive, particularly in the light of the very harsh conditions in detention centres, including those in the Evros region.

115. The imprisonment of a migrant or an asylum seeker for up to 18 months in conditions that are usually found to be even worse than in the regular prisons could be considered a punishment imposed on a person who has not committed any offence. This appears to be a serious violation of the principle of proportionality and may render the deprivation of liberty arbitrary.

116. Failure to apply alternatives to detention, lack of effective judicial review and the excessive length of detention may also render the detention of an individual arbitrary.

117. With regard to the vast number of round-up operations leading to the detention by the police of foreigners and members of the Roma community (including those who are Greek citizens), the Working Group recalls that any detention on discriminatory grounds constitutes arbitrary detention and furthermore, that detention without any legal basis may also render the detention arbitrary.

VI. Recommendations

118. In the light of the information received and the concerns expressed, the Working Group make recommends that the Government of Greece:

(a) Reform the judicial system to guarantee that all persons in pretrial detention receive a fair and speedy trial;

(b) Consider the possibility of decriminalizing certain offences, reducing prison sentences, and applying non-custodial measures in order to combat the severe overcrowding in prisons and the inappropriate utilization of police stations to hold detainees for periods beyond 72 hours;

(c) End the policy of systematic detention of all migrants in an irregular situation, and instead explore alternatives to detention. Detention should be a measure of last resort, limited to cases where there is a risk of the person absconding or when the person poses a threat to her or his own security or public security. The duration of detention should be limited to the minimum time necessary to carry out removal or other proceedings. Less coercive measures should always be considered before resorting to detention, in accordance with Law No. 3907/2011;

(d) Significantly improve detention conditions and procedural safeguards, and develop appropriate regulations for all detention facilities, in accordance with international human rights standards. In particular, it should:

(i) Systematically inform detained migrants in writing, in a language that they understand, of the reason for their detention, its duration, their right to have access to a lawyer, the right to promptly challenge their detention, and to seek asylum;

(ii) Ensure that all migrants deprived of their liberty are able to contact promptly their family, consular services and a lawyer, free of charge;

(iii) Ensure that all detained migrants have access to proper medical care, an interpreter, adequate food and clothes, hygienic conditions, adequate space to move around and access to outdoor exercise.

119. The Working Group also recommends that:

(a) At the time of detention, detainees be provided in writing, in a language they understand, with the grounds for their detention, clearly and exhaustively defined;

(b) Detainees be provided with a written explanation of their rights and how to exercise them.

120. The legality of detention must be open for challenge before a court, and a regular review should be conducted within a fixed time limit. Each decision to detain should be reviewed to confirm its necessity and compliance with international legal standards by means of a prompt oral hearing by a court or similar competent independent and impartial review, accompanied by appropriate legal aid. In the event that continued detention is authorized, detainees should be able to initiate further challenges against their detention.

121. Detainees should be held in special immigration detention centres in conditions appropriate for their status, and not together with persons charged with or convicted of criminal offences (unless so charged or convicted themselves).

122. Detainees should be given adequate access to their legal representatives, relatives and officials of UNHCR.
123. The Government should limit the use of detention to appropriate cases, such as of asylum seekers whose application has been rejected after the asylum determination process (namely, when the incentive to abscond has increased) or where removal is imminent and there are reasons to believe it cannot be effected unless the individual is detained. The power to detain should not be exercised if the person concerned is, on the basis of substantiated evidence, fully integrated into the society from which that person's removal is sought.
124. Alternative and non-custodial measures, such as reporting requirements, should always be considered before resorting to detention.
125. Detaining authorities should be required to establish a compelling need to detain that is based on the personal history of each individual asylum seeker.
126. Any review body should be independent of the detaining authority.
127. Specialized non-governmental organizations, UNHCR and legal representatives should have access to all places of detention.
128. All staff members of detention facilities should receive training on the special situation and needs of asylum seekers in detention.
129. Effective measures should be taken to ensure that migrants have full access to lawyers and interpreters to appeal deportation decisions, and to prevent the refoulement of persons in need of international protection.
130. The Government should refrain from detaining unaccompanied minors and families with children, in conformity with the principles of the best interests of the child and of family unity.
131. The Government should continue to facilitate, where possible, the voluntary return of migrants who are willing to return to their countries, as opposed to deportation proceedings, in full accordance with international human rights law.
132. Lawyers and civil society organizations should be ensured full access to all detention facilities, and a systematic, independent monitoring system should be established for them.
133. All detained persons claiming protection concerns should be adequately informed of their right to seek asylum and be able to file an asylum application and communicate with UNHCR, lawyers and civil society organizations.
134. The Government should strengthen, through the provision of competent staff and resources, the Office of the Ombudsman and the National Commission for Human Rights in order to allow them to effectively accomplish their mission of human rights protection and promotion for all, including migrants, regardless of their administrative status, including by undertaking regular unannounced visits to detention facilities throughout national territory.

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Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Report of the Working Group on Arbitrary Detention****Addendum****Mission to Brazil****Summary*

The Working Group on Arbitrary Detention conducted an official visit to Brazil from 18 to 28 March 2013 on the invitation of the Government.

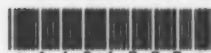
During its visit, the Working Group met with senior authorities from the executive and judicial branches, as well as with State and local authorities. The Working Group visited places where persons are deprived of their liberty in Brasília, Campo Grande, Fortaleza, Rio de Janeiro and São Paulo.

The Working Group observed a number of positive initiatives, such as the amendments made in 2011 to the Criminal Procedure Code stipulating that preventive detention is to be considered a last resort and applicable to those who have committed crimes with more than four years of imprisonment.

The Working Group nonetheless draws attention to a number of issues that need to be effectively addressed in order to ensure rigorous protection against the arbitrary deprivation of liberty. It noted that, despite the positive legal reforms in the criminal justice system, in practice, access to justice for arrested persons and detainees is severely deficient in many aspects.

The Working Group expresses concern at the excessive use of deprivation of liberty in Brazil, which has one of the world's largest prison populations, and at the

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.



number of persons currently in pretrial detention. In recent years, the number of indigenous persons in the prison population has increased by 33 per cent, and they are often discriminated against both when preventive measures are applied and when punishment is imposed, often involving harsh imprisonment. There is a worrying trend towards using the deprivation of liberty as a measure of first rather than last resort, as would be required by international human rights standards.

As a result of excessive detention, detention facilities are usually overcrowded. In some cases, the number of detainees exceeds capacity by 100 per cent.

Access to justice for detainees has been weakened by severe lack and sometimes absence of effective legal assistance. The majority of those who are in prison are young, black men with poor backgrounds who cannot afford a private lawyer. The sheer workload of public defenders is also a critical problem that has an adverse impact on the right of a detainee to equality and fair trial.

The compulsory confinement of drug users and chemical dependents is also an issue of concern that raises questions regarding various fundamental human rights, particularly given that judicial review is no longer carried out once a drug user has been placed in detention.

The Working Group acknowledges the challenges that Brazil must face when tackling an increasing number of incidents of criminal activities, and that often public opinion supports laws and policies that are tough on crime. The Working Group recalls, however, that policies and actions relating to the deprivation of liberty at the federal and State levels should adhere and conform fully to international human rights standards, the same ones that Brazil has endorsed through the agreements it has signed and ratified. These international standards clearly provide protection against the arbitrary deprivation of liberty.

Annex

[English only]

Report of the Working Group on Arbitrary Detention on its visit to Brazil (18 to 28 March 2013)

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1-3	4
II. Programme of the visit.....	4-8	4
III. Overview of institutional and legal frameworks.....	9-57	5
A. Political and institutional system.....	9-29	5
B. International human rights obligations.....	30-35	7
C. Judicial guarantees.....	36-50	7
D. Asylum seekers, refugees and migrants.....	51-57	9
IV. Findings.....	58-132	10
A. Positive aspects.....	58-64	10
B. Excessive recourse to the deprivation of liberty.....	65-83	10
C. Overcrowding.....	84-95	12
D. Prolonged pretrial detention.....	96-100	13
E. Absence of effective legal assistance.....	101-110	14
F. Compulsory confinement of drugs users.....	111-119	15
G. Detention of minors.....	120-128	16
H. Deprivation of liberty of persons with mental disabilities.....	129-132	17
V. Conclusions.....	133-145	17
VI. Recommendations.....	146-149	18

I. Introduction

1. The Working Group on Arbitrary Detention conducted an official visit to Brazil from 18 to 28 March 2013 on the invitation of the Government. The delegation comprised two members of the Working Group, Roberto Garretón (Chile) and Vladimir Tochilovsky (Ukraine). They were accompanied by staff members of the Working Group secretariat.
2. The Working Group thanks the Government of Brazil for the invitation to visit the country. The visit was the eighteenth to Brazil by a human rights mechanism of the United Nations. The Working Group was able to carry out the various stages of the visit thanks to the full cooperation of the Government. It also thanks the United Nations Development Programme for its assistance in preparing the visit. The Working Group also extends its appreciation to the civil society organizations that it was able to meet in Brazil.
3. The Working Group benefited from various meetings held with federal and State authorities and the valuable information they provided.

II. Programme of the visit

4. The Working Group met with senior authorities from the executive and judicial branches of the State, including the Minister for Justice; the Minister for Health; the Minister and Chief of the General Secretariat of the Presidency of the Republic; the Minister and Chief of the Human Rights Secretariat of the Presidency of the Republic; the Minister and Chief of Staff of the Presidency of the Republic; members of the Superior Tribunal of Justice and the National Council of General Public Defenders; a representative of the Federal Council of Lawyers Guild of Brazil; the National Council of the Public Ministry; the National Council of Justice; the National Secretariat of Public Security; the National Penitentiary Department; the National Ombudsman on Human Rights; the Human Rights Defence Council; the Secretariat for Policies on Women; the Secretariat for Policies on Promotion of Racial Equality; the Health Provision Secretariat; the National Secretariat for the Promotion of Children's and Adolescents' Rights; and the National Secretariat for the Promotion and Defence of Human Rights.
5. In all the cities that it visited, the Working Group met with officials of ministries, first-instance judges and prosecutors, and local authorities. In the Federal District, it met with representatives of the Tribunal of Justice, the Public Ministry and the Public Defence Office, as well as with representatives of the State Secretariats of Public Security, Children and Minors, and Justice, Human Rights and Citizenship. In the State of Ceará, the Working Group met with representatives of the Tribunal of Justice and the Public Ministry and Public Defence, as well as with the Ceará Secretariat of Justice and Citizenship. In Rio de Janeiro, it met with representatives of the Tribunal of Justice, the Public Ministry and the Public Defence, as well as with the Secretariat of Social Assistance and Human Rights and the Secretariat of Security.
6. During its visit to São Paulo, the Working Group conducted meetings with the State Secretariat of Public Security and the State Secretariat of Penitentiary Administration, as well as with representatives of the Tribunal of Justice, the Public Ministry and the Public Defence Office. Lastly, in Mato Grosso do Sul, the Working Group held meetings with representatives of the Tribunal of Justice, the Public Ministry and the Public Defence Office, as well as the State Secretariat for Justice and Public Security and the State Agency of Administration of the Penitentiary System. In the States visited, the Working Group also met with members of Parliament, with representatives of bar associations, representatives of international organizations and Brazilian civil society organizations.

7. The Working Group appreciates the fact that it was able to visit all the places of detention it had requested and to conduct private interviews with the detainees of its choice, without restriction.

8. The Working Group visited places where persons are deprived of their liberty in Brasília, Campo Grande; Fortaleza; Rio de Janeiro; and São Paulo. In Ceará, the Working Group made an unannounced visit to a police station, and visited the III Detention Facility "Professor Juca Neto" (Complejo Penitenciario Estadual Itaitinga II) and the Psychiatric Unit of the Sanatory and Penal Hospital Ota Lobo. In Rio de Janeiro, it visited the Penitentiary Complex of Ginecira in Bangu "Vicente Piravige", as well as the Centre Belford Roxo (CAI-Baixada). In the State of São Paulo, the Working Group visited the Experimental Health Unit (Unidade Experimental de Saúde) as well as the Temporary Detention Facility I de Pinheiros. Lastly, In the State of Mato Grosso de Su the delegation visited the Colônia Agrícola of Campo Grande.

III. Overview of institutional and legal frameworks

A. Political and institutional system

9. The law provides for an independent judiciary. There are specialized courts for military, police, labour, juvenile, family matters and elections. Article 92 of the federal Constitution establishes that the judiciary is made up of the Federal Supreme Court of Justice, the Superior Court of Justice, the federal regional courts, labour courts, electoral courts, military courts, federal and State district courts, and judges.

10. The States have the authority to organize their own justice system within the federal system, provided that they respect the principles set forth in the Constitution.

11. Military courts at the federal level comprise a Superior Military Court, military courts and judges. Ten judges of the Superior Military Court are active-service military, while five of them are civilians. Sentences handed down by the Superior Military Court may be appealed before the Federal Supreme Court of Justice. Military courts are not competent to tried civilians.

12. The National Council of Justice (Conselho Nacional de Justiça) is the main supervising body of the judiciary at the federal level. Within the Council, the Mutirão Carcerário monitors and oversees prisons. Every State has a local prison council (conselho penitenciário) that makes recommendations to judges on whether individual prisoners should be paroled, pardoned or have their sentences commuted, as well as whether they should be moved to a lower level of security.

13. The Working Group was informed that the judiciary was underfunded and often subject to political and economic influence. The backlog in federal and State cases frequently led courts to dismiss old cases unheard. At the same time, the Working Group noted the efforts made by the judiciary, the National Council of Justice and other organs to guarantee access to justice throughout the country.

14. The Office of the Public Prosecutor (Promotor Público) is responsible for bringing criminal charges under federal or State law. Prosecutors rely solely on the investigations of the Federal Police and the State Civil Police to establish whether enough evidence exists to lay criminal charges. Prosecutors do not have their own investigative capacity.

15. Military prosecutors are responsible for bringing criminal charges under federal or State law for violations of the Military Penal Code.

16. Complementary Law No. 80 of 12 January 1994 provides for the creation of public defenders' offices (Defensoria Pública) in each State. In Brazil today, there are approximately 5,500 public defenders, 12,000 prosecutors and 16,000 judges.
17. The Secretariat for Human Rights of the President of the Republic (Secretaria de Direitos Humanos da Presidência da República) is responsible for elaborating projects and coordinating tasks to promote and protect human rights. The office of the National Human Rights Ombudsman has received, since its establishment, more than 170,000 complaints of alleged human rights violations, including cases of arbitrary detention.
18. The Federal Police, operating under the Ministry of Justice, is a small, primarily investigative, force.
19. Most police forces come under the control of the States. The State police acts under the authority of the governors of the State, and is divided into the uniformed military police, charged with maintaining order and repressing behaviour that might affect the security of citizens, and the civil police, composed of plain-clothed officers who have an investigative function.
20. The military police is considered an army auxiliary and reserve force. A special police court exercises jurisdiction over State military police, except for police members those charged with "wilful crimes against life" (in which case, common civilian courts are competent). Delays in the proceedings of this court have allowed many cases to expire due to the statute of limitations.
21. Military police officers are tried in military courts, in which judges and penal prosecutors hearing cases are military officers.
22. The civil police force is responsible for initiating police inquiries (enquérito policial), which is the first step of a criminal prosecution. The force has a judiciary function and operates at State level. The infrastructure of the force includes the agencies responsible for identification, criminology and forensic medical examination.
23. Municipalities may constitute their own municipal police to protect property, services and facilities.
24. The offices of the police Ombudsmen (Ouvidorias de Polícia) in the States were created in the 1990s to fill the void left by the lack of action taken by the Public Prosecutor's offices in overseeing police agencies. They are external control mechanisms tasked with disciplinary oversight of the State police.
25. The Internal Affairs Units (Corregedorias) of the military and civil police forces in the States have real investigative capacity for police misconduct, including cases of ill-treatment or torture.
26. The National Penitentiary Department (Departamento Penitenciário Nacional), which comes under the Ministry of Justice, supervises corrections facilities in each State, including their funding needs, and maintains maximum security federal prisons.
27. Brazil does not have a centralized prison authority with executive powers; most prisons are under State-level authorities. The Law on Criminal Execution No. 7.210 of 11 July 1984 regulates the organization of the penitentiary system. The Law on Criminal Execution established community councils (*conselhos da comunidade*) to monitor prisons through unannounced visits. Membership in the Council is an unpaid voluntary position.
28. The Law on Criminal Execution also outlines the functions of the organs of criminal prosecution, such as the judge on the application of sentences (Juiz da Execução), the Public Prosecution Office (Ministerio Público) and the Public Defence Office (Defensoria

Publica). This law regulates all aspects relating to the treatment of prisoners, their rights and duties.

29. The Law on Criminal Execution provides for three penitentiary regimes: closed regime (prisons); semi-open regimes (farming and industrial colonies) and open regimens (half-way houses).

B. International human rights obligations

30. Human rights treaties have a superior hierarchic level than ordinary domestic laws.

31. With regard to the protection of human rights, Brazil is a party to the core universal international and regional human rights treaties and agreements, including the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It has recognized the specific competences contained in article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (individual complaints); in articles 8 and 9 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (inquiry procedure); and in articles 21 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Inter-State complaints and individual complaints).

32. Brazil is a party to the Convention on the Rights of Persons with Disabilities, the Optional Protocol thereto, and to the International Convention for the Protection of All Persons from Forced Disappearance. It is not a Party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families or to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

33. Concerning the Second Optional Protocol to the International Covenant on Civil and Political Rights, Brazil has submitted declarations or reservations to its article 2.

34. Brazil has also adhered to the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention relating to the Status of Refugees, the Convention relating to the Status of Stateless Persons, the Geneva Conventions and the Protocols additional thereto, the fundamental conventions of the International Labour Organization, the Rome Statute of the International Criminal Court, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization.

35. The Working Group was informed during its visit that Brazilian domestic legislation and jurisprudence only rarely refer to international human rights principles and norms.

C. Judicial guarantees

36. At the national level, the Constitution of the Federative Republic of Brazil of 1988 affirms, in its Title I, that the dignity of the human person is a fundamental principle of the State and central to its commitment to the rule of law. The Constitution also indicates that the State's international relations are governed by the prevalence of human rights.

37. The Constitution provides protection for core fundamental rights, including the right not to be arbitrarily deprived of one's liberty. Title II of the Constitution defines the fundamental rights of all persons, and outlines the State's commitment to protecting those rights.

38. The Constitution also provides, *inter alia*, for the right to free legal assistance for the indigent; the right of arrested persons to specific judicial remedies, such as habeas corpus; the right of an arrested person to be informed of his or her rights; the right to have a judicial order revoking an illegal arrest and the right not to be imprisoned where the law permits release on one's own recognizance. Various laws have been enacted in recent years that have strengthened the constitutional right to liberty.

39. The Constitution prohibits arbitrary detention. Only judges may decide on the validity of any deprivation of liberty. Arrests must be made with a warrant, with the exception of suspects caught in the act. Police officers must bring a person detained before a judge no later than the day after the person's arrest. They may arrest an individual only on the basis of a judicial warrant issued by a competent judicial authority, with the exception of cases *in flagrante delicto*. Suspects must be informed of their rights at the time of the arrest or before being taken into custody for interrogation. Arrest warrants must be based on sufficient evidence.

40. The Criminal Procedure Code of 1941 was substantially reformed in 2011. It regulates preventive imprisonment and detention. Its article 283 establishes that no person may be imprisoned except for *flagrante delicto* or if decreed in writing, with due justification by the competent judicial authority.

41. Provisional detention is limited to five days under specific conditions, although a judge may extend this period. Temporary detention is for an additional five-day period for processing. Preventive detention is for an initial period of 15 days.

42. Article 311 of the Criminal Procedure Code establishes that preventive detention may be ordered by the judge, *ex officio*, as a result of a criminal lawsuit or upon the request of the Public Prosecutor, the plaintiff or attendee, or by a representative of the police authority. According to article 313, preventive detention may also be ordered as a guarantee for public order, economic order or if deemed convenient for criminal instruction.

43. If a detainee is caught *in flagrante delicto*, the police are required to inform a judge thereon within 24 hours. Use of force during arrest is prohibited unless the suspect attempts to escape or resists. The court must charge the individual at the latest by the end of the day following the arrest. The chief judicial officer determines whether it should proceed and, if so, assigns it to a State prosecutor, who decides whether to issue an indictment.

44. The police inquiry (*enquérito policial*) is non-accusatorial and is conducted confidentially. At the end of the police inquiry, when the police have gathered enough information, the evidence is handed over to a judge, who then passes the case to a public prosecutor, who reviews the file and decides whether to file charges.

45. The judge may impose precautionary measures, including detention. Detention is imposed in order to (a) uphold the public or economic order; (b) allow the criminal investigation to proceed without inhibition; and (c) guarantee the future application of criminal law.

46. Detainees arrested *in flagrante delicto* must be charged within 30 days of their arrest; other defendants must be charged within 45 days. This period may be extended. Bail is available for most crimes, but is granted infrequently.

47. The law does not provide for a maximum period of pretrial detention, although it is estimated at being usually between 80 and 120 days. Authorities may hold detainees for the duration of the investigation and subsequent trial, subject to judicial review. If a court acquits a defendant who was previously held in detention, the Government must compensate the defendant for financial losses as well as for moral prejudice incurred due to incarceration.

48. The Constitution provides for the right to a fair and public trial. The law entitles a detainee to prompt access to an attorney. Defendants and their attorneys have access to all court-held evidence related to their cases.

49. Defendants enjoy the presumption of innocence. They have the right to confront and question witnesses. Defendants have a right of appeal to State superior courts and to appeal State court decisions to both the Federal Superior Justice Court and the Federal Supreme Court on constitutional grounds.

50. Cases involving capital crimes are tried before a jury. Judges try those accused of lesser offences. Confessions are allowed as evidence, with few restrictions on their use in courts.

D. Asylum seekers, refugees and migrants

51. Refugee Law No. 9474/97 provides for the granting of asylum or refugee status in accordance with the Convention relating to the Status of Refugees and the Protocol thereto. The Government also provides temporary protection to persons who may not qualify as refugees. Refugee status is granted to approximately 35 per cent of those who apply. The Government affords protection against refoulement.

52. Provisions for the imprisonment of foreigners for reasons of irregular migration, and deportation and extradition procedures, are set out in Law No. 6.815/1980. No detention centres for migrants in an irregular situation or asylum seekers are available. In practice, if a foreigner detained for immigration purposes declares her or his will to apply for political asylum in Brazil, that person is immediately released.

53. CONARE, the National Committee for Refugees, is an interministerial body chaired by the Ministry of Justice that comprises representatives of the Ministries of Foreign Affairs, Education, and Labour and Health, in addition to representatives of the federal police and civil society organizations. The Office of the United Nations High Commissioner for Refugees in Brazil is also a member of the Committee, although without a right to vote; the Federal Public Defender's Office (Defensoria Publica da União) is a consultant member.

54. Brazil is also a party to the Convention on the Reduction of Statelessness and the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession. No procedures for determining statelessness status have, however, been established.

55. National migration laws seem to be outdated, which results in migrants using the asylum process in an attempt to legalize their stay in the country.

56. In 2012, CONARE signed an agreement with the Federal Public Defender's Office to allow public defenders to interview asylum seekers and recognized refugees and to represent them in judicial procedures.

57. In 2010, a new law granted permission to the military forces at State borders to make arrests and to search persons, vehicles, vessels and aircraft. The inability of border agents and migratory authorities to identify persons with international protection needs can lead to the detention of asylum seekers, prevention from entering the territory or return to their country of origin. Refugees may thus be intercepted as illegal migrants, especially in the Amazon region.

IV. Findings

A. Positive aspects

58. The Working Group recognizes that the Brazilian authorities are confronting an authoritarian culture, the legacy of colonial times and of 21 years of military dictatorship (from March 1962 to March 1985). Nonetheless, the federal Constitution of 1988 is a modern instrument that consecrates and incorporates international human rights principles and norms. IN paragraph 2 of article 5, the Constitution includes among its fundamental rights and guarantees other rights that derive from the international treaties to which Brazil is a party. The Constitution gives particular force to the writ of *habeas corpus*.

59. The Working Group observed a number of positive recent initiatives, such as the amendments made in 2011 to the Criminal Procedure Code stipulating that preventive detention is to be considered a last resort and applicable solely to those who have committed crimes punished with more than four years of imprisonment. The provision on precautionary measures is also progressive, providing alternative measures to the deprivation of liberty.

60. Law No. 12.403 on precautionary measures, approved in 2011, proposes nine alternatives to pretrial detention, such as bail and electronic monitoring. Offenders who commit non-violent crimes, which in the case of conviction could carry up to four years in prison, are not placed in pretrial detention.

61. The Law on Penal Execution, amended in 2011, envisages benefits, such as a reduction in a prison sentence if the prisoner has taken the initiative to pursue educational studies. Positive legislative reforms regarding adolescents who are in conflict with the law and in relation to persons with mental disabilities have been enacted as well.

62. The Working Group also observed good practices that have the potential to be strengthened, which would offer further protection for the right to be free from arbitrary deprivation of liberty. Some include existing institutions that can be strengthened, such as the National Council of Justice task force, which visits prisons and has assisted in recent years in the release of many detainees who were illegally detained. The task force conducted reviews of more than 295,000 criminal cases in 2010 and 2011, resulting in the release of almost 22,000 prisoners. Similar independent task forces could assist in protecting against arbitrary detention if they were to be established at the level of the States in Brazil.

63. In the State of Rio de Janeiro, a task force was created to address overcrowding in prisons. It reviews the sentences and status of inmates to determine whether any should or could be released. In July 2011, in the State of São Paulo, the National Council of Justice began to review the sentences of 94,000 inmates.

64. The Working Group commends the Government for the positive efforts it has made, particularly through legislative reforms, to improve the situation of deprivation of liberty in Brazil.

B. Excessive recourse to the deprivation of liberty

65. Despite the positive initiatives observed, the Working Group draw the attention of the Government to a number of issues that need to be addressed effectively in order to ensure rigorous protection against arbitrary deprivation of liberty.

66. The Working Group observed that, in practice, access to justice for arrested persons and detainees is severely deficient in many aspects. Several prerequisites provide fundamental protection against the arbitrary deprivation of liberty; they include core rights of arrested and detained persons at the pretrial and trial stages, and after conviction. Deprivation of liberty is thus considered to be arbitrary if particular rights to a fair trial are violated. These rights relate to the right to be presumed innocent until proven guilty by law, the right to effective legal defence, the right to be tried without undue delay and the right to appeal to a higher court.

67. Throughout their visit, the members of the Working Group consistently referred to international human rights standards, particularly those enshrined in the International Covenant on Civil and Political Rights, to which Brazil has acceded. In particular, article 9 of the Covenant envisages safeguards against the arbitrary deprivation of liberty.

68. Although there is no legal maximum fixed term for pretrial detention, a period of between 80 and 120 days is normally cited in case law. This period corresponds to the sum of all terms legally provided for in criminal proceedings from initial investigation through to imprisonment.

69. With a prison population of more than 549,000, Brazil has the largest in Latin America and is one of the largest in the world. There are approximately 248 detainees per 100,000 inhabitants. Even more troubling, around 217,000 detainees (43.5 per cent) are awaiting trial in pretrial detention. This percentage is especially significant in the States of Amapá, Minas Gerais, Pernambuco, Amazonas, Sergipe and Piauí. Some 91,600 convicts work; 3,392 prisoners are foreigners.

70. The female prison population, currently around 38,430 (7 per cent), has, in recent years, been growing at twice the rate as that of men. The proportion of indigenous persons in the prison population has also increased by 33 per cent. Many people in prison have been accused of drug trafficking (24.3 per cent) and offences against property (4 per cent).

71. The members of the Working Group were also informed that indigenous persons were often discriminated against both when preventive measures were applied and when punishment was imposed, which often involved harsh imprisonment.

72. The Working Group received serious allegations concerning ill-treatment and abuse during apprehension and arrest, as well as during detention in police stations, particularly in tort of young Afro-descendants.

73. A study presented in 2012 by the Instituto Terra, Trabalho e Cidadania and the Pastoral Carcerária in the Centro de Detenção Provisória I of São Paulo found that, in Rio de Janeiro and São Paulo, pretrial detention was not sufficiently justified in 93 per cent of cases (the authority limited itself to invoking *in flagrante delicto*), and that, in 63 per cent of them, the legal argument given to prolong detention was "public order".

74. In addition, the backlog and overwhelming number of cases as resulted in increasing delays in the judging of cases. Judges hear several criminal cases in a single day as a routine practice, which has significantly affected the right to a fair trial.

75. The Working Group observed that judges routinely imprison large numbers of people who have been accused of minor offences, such as petty theft. More than one third of all persons detained on this charge spend more than 100 days in custody, and many spend more time on remand than serving the term to which they are actually sentenced.

76. There are 33,000 people in the prisons of the State of Rio de Janeiro, including 1,600 women. Around 14,000 are in pretrial detention. Some 2,700 people are in a semi-open regimen.

77. Approximately 202,000 people are in detention in the State of São Paulo, including 12,600 women. Some 16,000 people are subjected to alternative measures.
78. According to the Law of Penal Execution modified on 30 June 2011, inmates have a day removed from their sentence for every 12 hours that they attend classes.
79. One worrying trend observed by the Working Group was that deprivation of liberty is being used as the first resort rather than the last, as required by international human rights standards.
80. Detainees are commonly held in police custody and later released without any registration, sometimes without being informed of the offences of which they are accused or of their rights as detainees.
81. Many detainees interviewed by the Working Group complained that judges and prosecutors rarely visited them. They referred to having been victim of the excessive use of force, ill-treatment and beatings during apprehension and their detention in police stations.
82. The excessive use of pretrial detention contributes to overcrowding, the lack of effective separation between convicted prisoners and pretrial detainees, and excessive resort to condemnatory sentences.
83. In addition, owing to poor record keeping and systemic and bureaucratic failings, many inmates remained in detention beyond the term of their sentences.

C. Overcrowding

84. Brazil has four federal prisons and 1,124 State prisons, 55 of which exclusively for women. The total capacity of these facilities is 355,000. However, the penitentiary system, however, currently holds some 549,000 detainees and prisoners. Most prisons are in a precarious situation. Their infrastructure is sub-standard, often inadequate, and the number of education, health and welfare professionals working in them is insufficient.
85. As a result of excessive detention, detention facilities are usually overcrowded. In some cases, the number of detainees was found to exceed the capacity by 100 per cent. In addition, this situation could be further exacerbated if the estimated 192,000 arrest warrants currently pending were to be executed.
86. Despite the amendment made to the Criminal Procedure Code in 2011 to allow for alternative measures to detention, the Working Group observed that there had been no substantial reduction in the use of detention since the introduction of the amendment. In incidences where measures such as bail were applied, the detainee was not able to pay the amount required. It should not be assumed, however that these amounts are systematically established at a level higher than the paying capability of individuals.
87. The Working Group found that deprivation of liberty was imposed even in situations where the offence was regarded as minor, such as petty non-violent theft or for non-payment of child support, raising serious concerns with regard to the application of the principle of proportionality.
88. Severe overcrowding in prisons and detention centres is prevalent, particularly in the States of Rio de Janeiro and São Paulo. In a penitentiary system designed to hold 211,255 prisoners, there are currently 342,388. The Pinheiros Women's Facility in the city of São Paulo held 1,261 detainees in a building designed to hold 512. There is no a semi-open centre for women in Brasília.
89. In the semi-open Agro-Industrial Penal Centre of Gameleira (Mato Grosso do Sul), there were, at time of the Working Group's visit, 630 people deprived of their liberty. Of

them, 470 were working, 240 outside the centre. Each of them was receiving an amount equivalent to the general minimal salary.

90. Overcrowding often requires holding convicted prisoners in pretrial detention centres.

91. In 2010, 57,195 people (12 per cent of the total Brazilian prison population) were imprisoned in police precincts (*delegacias*). Detainees tend to stay for longer than 24 hours because of the lack of space in prison facilities. Police stations were never designed to host detainees for long periods. Police officers thus assume guarding functions. In police stations, detainees have very limited access to medical care and doctors.

92. Public policies that are "tough on crime" lead to a harsh trend of mass incarceration, while most States have neither the capacity nor the structure to deal with the consequences. Endemic overcrowding leads to the mistreatment of prisoners and inadequate facilities for inmates.

93. In June 2008, the National Penitentiary Department determined that the number of prisoners exceeded the capacity for which the prisons were designed by 40 per cent.

94. Overcrowding has led to inmate unrest and a rising number of riots and killings in prisons.

95. The Working Group considers that overcrowding should be reduced by increasing the use of alternative measures of constraint and alternative sentences, particularly for less serious offences.

D. Prolonged pretrial detention

96. In the fourth largest prison population in the world, 44 per cent are pretrial detainees. During its visit, the Working Group came across cases where prolonged pretrial detention lasted for many months, even years. During that period, detainees were often unaware of the status of their case.

97. The Working Group was constantly informed that a backlog in court cases caused substantial and serious delays in trials. Appeals to the higher courts also took a long time to be settled.

98. The Working Group points out that the excessive recourse to pretrial detention contradicts basic rule of law principles and also has implications for detainees, who are exposed to threats against their life, physical integrity and health, and to abuses and ill-treatment by guards and police officers.

99. Many pretrial detainees were found to be held in a security level inappropriate for the offences that they had allegedly committed. Others had been detained for far longer as pretrial detainees as they would have expected if actually sentenced.

100. The presumption of innocence enshrined by the Constitution seems to be a practice that has been abandoned by judges. Public pressure resulting from the drawn-out nature of judicial trials has led to an increasing number of people in pretrial detention. The Working Group considers that the high number of detainees in pretrial detention could be a consequence of the inability of the criminal justice system to process cases efficiently.

E. Absence of effective legal assistance

101. Access to legal counsel is guaranteed by article 14, paragraph 3 (d) of the International Covenant on Civil and Political Rights from the outset of detention.¹ If a detainee cannot afford an attorney, Brazilian law requires the court to provide a public defender or private attorney at public expense. Indigents must be provided by a defence lawyer paid by the State.

102. In its interviews with detainees and prisoners, the Working Group found that free legal assistance was not available to all those who needed it. The problem with access to justice for detainees has been worsened by a severe lack and, in some cases, the absence of effective legal assistance.

103. In the State of São Paulo, which used to employ private attorneys, a State public defender's office was established in 2006. Since then, 610 public defenders have been working in 41 municipalities. The Public Defender's Office of the State of Goiás was opened in June 2011. The first exam for the recruitment of 40 public defenders is under way. In the State of Paraná, 87 candidates were approved and posted. In Santa Catarina, the system of recruitment of lawyers hired by convention (*non concursados*) was declared unconstitutional. At present, 56 public defenders are on duty and operate in 15 municipalities of the State. The State of Rio de Janeiro has a 60 year-old and experienced public defender's system, with more than 800 public defenders (73 exclusively focusing on criminal cases), but it constitutes an exception in the context of the whole country.

104. Public defenders assigned to the penitentiary system should, by law, visit prisons and detention centres at least once a week. A common complaint heard from all parties interviewed, including members of the judiciary, was that there were not enough public defenders or sufficient legal assistance available for those in detention. The majority of those in prison are young, indigenous people and Afro-descendants with poor backgrounds who cannot afford private lawyers. The Working Group observed in general that the majority of those disadvantaged in the criminal justice system, including adolescents and women, were poor and could not afford proper legal defence.

105. The lack of institutional autonomy and of financial and human resources has curtailed the work of public defenders. Their sheer workload is also a critical problem. Public defenders who provide free legal aid can have as many as 800 cases at a time, which has an adverse impact on the right of a detainee to equality and fair trial. Even in States where there is a public defence system, rural areas often do not have public defenders assisting those in detention. The heavy work load also prevents public defenders from carrying out their responsibilities efficiently.

106. The detainees interviewed by the Working Group claimed that they only met their public defender at the beginning of their trial (arraignment), which could be months after their arrest. In some cases, it took years for a detainee to appear in court. A detainee's chance of meeting and discussing his or her case before trial was higher if the detainee could afford a private lawyer.

107. Public defenders do not lack the necessary competency and qualification to carry out their responsibilities; the problem relates mainly to the sheer workload that they have to manage. Furthermore, *pro bono* services are often not available to detainees, such as in the State of São Paulo. Judges informed the Working Group of their own difficulties in handling increasing caseloads. In some places, there are insufficient judges to deal with

¹ See A/CONF.144/28/Rev.1, p. 117.

criminal cases. In Brasília, there are only nine public defenders to handle the demands of a penal population of 11,500.

108. The Working Group encountered many cases where detainees, although entitled to such benefits as moving from a closed regime to a semi-open one could not do so owing to the absence of legal assistance. Delays in obtaining a judicial order to initiate a process were an issue raised constantly throughout the visit of the Working Group.

109. The mass release of prisoners by the National Council of Judges in recent years shows that the criminal justice system is largely incapable of providing effective and adequate legal assistance in following up on the cases of detainees.

110. The Working Group was also informed of problems experienced by detainees and prisoners in communicating with their relatives and lawyers owing to the absence of telephones or appropriate channels of communication. It learned of several cases in which persons deprived of their liberty had not been able to inform a third person of their choice about their detention for prolonged periods of time. To contact their lawyer, detainees were often forced to communicate through family members during visits. Detainees without a family had no way of contacting their lawyer to obtain information on their case.

F. Compulsory confinement of drug users

111. The compulsory confinement of drug users and chemical dependents is also an issue of concern. Compulsory confinement is one of the three types of confinement provided for in article 6 of Federal Law 10.216/2001; the remaining two are voluntary and involuntary confinement. The latter may only be authorized by a medical doctor and at the request of a third party, usually a family member or legal representative. This type of confinement is to be notified to the Public Prosecutor within 72 hours.

112. The excessive use of detention as a punitive measure for drug users raises questions regarding various fundamental human rights.

113. In the State of São Paulo, compulsory confinement of addicts of crack cocaine and other drugs has been introduced in an effort to bring users on the street into detention. At the time of the Working Group's visit, 5,335 persons were detained in compulsory confinement.

114. On 4 January 2013, the Governor of the State of São Paulo announced a new regional plan to fight drug consumption whereby crack users would be put in compulsory psychiatric confinement. To manage confinement, a standing court (*Plantão Judiciário*) was established. In a police operation in a neighbourhood of São Paulo, more than 2,000 crack users were arrested.

115. In the State of Rio de Janeiro, most of those targeted under compulsory drug treatment are children and adolescents living on the streets. Those detained in this context are often placed in facilities unknown to their families or lawyers, who therefore had serious difficulties visiting them.

116. Habeas corpus is established by law but difficult to apply in practice in the case of, for instance, those detained for drug addiction, given that information concerning their identity and where they are being held is often difficult to obtain.

117. Police agents are said to target drug users in order to arrest them, and have often carried out arrests indiscriminately. These measures are also strongly enforced in view of the Football Association World Cup in 2014 and the Summer Olympics Games in 2016, which Brazil will host. According to the Government, compulsory admission of chemical dependents, particularly crack users, does not constitute a punitive measure, since neither

drug use nor drug addiction are considered crimes in Brazil. The purpose of the compulsory admission measures applied is to provide emergency treatment to chemical dependents that are in a particularly vulnerable situation.

118. The Working Group noted that judicial periodic reviews are often not carried out once a drug user has been put in detention. If no judicial review is conducted, a person may be detained for prolonged periods, even when that person is eligible for release. This is a cause for concern, given that the number of those arrested for drug-related offences in the country is particularly high.

119. The Working Group considers that, in all cases, drug addicts should be held in compulsory confinement only by judicial order and consent has been sought, if the person has refused medical treatment and undergone a medical examination. It should be applied for only short periods of time, and only when the drug addict is considered a threat to society.

G. Detention of minors

120. The Law on Children and Adolescents (No. 8069) of 1990 makes a distinction between a child under the age of 12 and an adolescent, between the age of 12 and 18. In exceptional cases, the law applies to those between 18 and 21 years of age (young adults). It establishes that no child or adolescent should be deprived of her/his liberty unless arrested *in flagrante delicto* or by written and well-founded order of a judicial authority.

121. Pretrial detention of minors may last a maximum of 45 days. Detention is not to be applied in cases where adequate alternative measures are possible. The maximum period of detention may not exceed three years, after which the adolescent is released or placed in a system of semi-liberty or assisted liberty. Release is compulsory when the offender reaches 21 years of age. Continued detention should be re-evaluated every six months.

122. The Working Group was informed that crimes, offences and misdemeanours committed by adolescents and children are considered infractions and recorded in the National Registry of Adolescents in Conflict with the Law. Between January and June 2011, 29,506 adolescents were subjected to socio-educational measures, and 91,321 were placed on the National Registry for various infractions.

123. In Brasilia, the proportion of minors in detention is five times higher than that in the rest of the country.

124. The Working Group reiterates the need to employ alternative measures to detention only as required by international human rights standards, particularly when dealing with minors. It was informed of many cases where minors had been placed in detention for minor offences or infractions that did not justify deprivation of liberty.

125. One of the most serious findings of the Working Group related to six adolescents currently detained at the Experimental Health Unit (Unidade Experimental de Saúde) in São Paulo, which the Working Group was able to visit. The adolescents were originally detained for serious and dangerous crimes, and were close to the maximum sentence of three-years prescribed by law when they were transferred to the Experimental Health Unit, where they were institutionalized without due legal process.

126. The Working Group is concerned at the absence of a legal basis for the detention of the above-mentioned individuals, particularly in the light of the fact that there is no clear deadline to the length of their detention. It was also informed that no effective judicial review of these cases had been conducted. Some members of the judiciary interviewed believed that their detention might even be unconstitutional. To justify the deprivation of

liberty of these individuals and to respond to the social and media pressure to keep them in detention, a law dating back to the 1930s has been used to provide legal support for the detention. The law does not comply with the principles and norms enshrined in the Constitution of Brazil and in international human rights law.

127. The Working Group is of the view that the above-mentioned type of deprivation of liberty is arbitrary under international human rights standards, particularly if it is without legal basis.

128. The Working Group observed that the health and sanitary conditions in the juvenile detention centres it visited in Rio de Janeiro were poor.

H. Deprivation of liberty of persons with mental disabilities

129. Custodial care of persons with mental disabilities is gradually being abolished; the system now provides care in the community, allowing free access to a variety of mental health services. Federal Law No. 10.216/2001 on Psychiatric Reform (based on Italian legislation) makes it illegal to construct new psychiatric institutions, and provide for progressively closing existing structures. Four psychiatric hospitals have been closed in the State of Ceará.

130. The Working Group was able to gather information regarding the deprivation of liberty of persons in the context of psychiatric institutions, and was informed that some of these institutions are often used to detain drug addicts as well.

131. Currently, some 4,500 persons are deprived of their liberty for mental disabilities.

132. Hospitalization in a psychiatric institution is a security measure of an undefined duration. In order to leave the psychiatric hospital, relatives of the interned patient must sign a commitment to submit the patient to ambulatory treatment for one year.

V. Conclusions

133. The Working Group acknowledges the difficult challenges that Brazil faces in confronting an authoritarian culture, the legacy of its colonial past and of 21 years of military dictatorship. Authorities are also tackling increasing incidents of criminal activities, such as homicide, gang violence, drug and human trafficking. In this context, the general public often supports governmental laws and policies that are tough on crime.

134. The Working Group nonetheless cautions that government policies and actions relating to the deprivation of liberty at the federal and State level should adhere and conform fully to international human rights standards, the same ones that Brazil has endorsed in the agreements that it has signed and ratified. These international standards clearly provide protection against arbitrary deprivation of liberty.

135. The Working Group recognizes that the problems described in the present report require cross-cutting and collective action, and should mobilize government authorities, representatives of civil society and other stakeholders.

136. The Working Group notes that the problems it witnessed during its visit have already been discussed in various forums. Indeed, most of those interviewed both in both government and non-governmental meetings agreed that these challenges need to be addressed. Members of the judiciary also recognized that there is a need for robust changes in order to restructure the justice system and to improve access to justice.

This is a positive revelation, as a clear understanding of the problems and challenges faced will, it is hoped, drive actions and initiatives to address these issues effectively.

137. The fact that deprivation of liberty is being used as the first resort rather than the last, as would be required by international human rights standards, is a worrying trend. Brazil has one of the world's largest prison populations, and the largest in Latin America.

138. The excessive use of pretrial detention contributes to overcrowding, little effective separation of convicted prisoners from pre-trial detainees, and excessive resort to condemnatory sentences. It should be recalled that excessive recourse to pretrial detention also contradicts basic rule of law principles, and also has greater implications for detainees, who are exposed to threats against their life, physical integrity and health, and of abuse and ill-treatment by guards and police officers.

139. Indigenous persons and Afro-descendants are often discriminated against both when preventive measures are applied and when punishment is imposed, which often involves harsh imprisonment.

140. The Working Group received serious allegations concerning ill-treatment and abuse during apprehensions and arrest, as well as during detention in police stations, particularly in tort of young Afro-descendants.

141. The Working Group observed that judges routinely imprison large numbers of people who have been accused of minor offences, such as petty theft.

142. Public policies that are "tough on crime" lead to a harsh trend of mass incarceration, while most States have neither the capacity nor the structures to deal with the consequences. Overcrowding should be reduced by increasing the use of alternative measures of constraint and alternative sentences, particularly for less serious offences.

143. The Working Group encountered many cases where detainees entitled to penitentiary benefits could not do so owing to the absence of legal assistance. Delays in obtaining a judicial order to initiate a process was an issue constantly raised throughout the visit of the Working Group.

144. Periodic judicial reviews are often not carried out once a drug user or a chemical dependent has been put in detention. In the absence of judicial review, a person may be detained for prolonged periods, even when the person is eligible for release. This is a cause for concern, given that the number of those arrested for drug-related offences in the country is particularly high.

145. The Working Group reiterates the need to employ alternative measures to detention of minors as required by international human rights standards. The Working group is concerned at the detention of six adolescents at the Experimental Health Unit (Unidade Experimental de Saúde) in São Paulo, and at the absence of legal basis for their detention, particularly in the light of the lack of any clear deadline for their detention. In addition, there has been no effective judicial review of their cases.

VI. Recommendations

146. The Working Group encourages the Government to ensure that the positive legislative and administrative developments described in the present report are

accompanied by effective implementation measures, in strict compliance with international human rights principles and standards.

147. The Working Group encourages the Government to continue its efforts to ensure that its institutional and legal frameworks regarding deprivation of liberty conform fully to the human rights standards enshrined in international human rights standards and in its legislation.

148. On the basis of its findings, the Working Group recommends that the Government:

- (a) Pay particular attention to reforming military jurisdiction and re-organizing the police, at both the federal and State levels, including the military police, and strengthening the community police (*policia comunitária*) and the proximity police (*policia de proximidad*);
- (b) Take appropriate measures to ensure that deprivation of liberty is only used as a measure of last resort and for the shortest possible time;
- (c) Ensure that States consider the model of independent special commissions for investigation of police officers in cases of alleged misconduct or ill-treatment;
- (d) Take measures alternative to detention for chemical dependents and drug users;
- (e) Ensure that foreign prisoners serve their sentences in their country of origin, so that they are able to enjoy the support of their relatives. The authorities should also make further efforts to reach bilateral transfer agreements with other States similar to those already signed with more than 23 countries;
- (f) Ensure that authorities expedite the effective implementation of a public defence system in the States of Goiás, Paraná, Santa Catarina y São Paulo;
- (g) Ensure that the State of Rio de Janeiro makes further efforts to transfer detainees from police stations to penitentiary institutions;
- (h) Ensure that all prisoners who have fulfilled the requisites to be transferred to a semi-open regimen are effectively transferred;
- (i) Ensure that, in all cases, drug addicts are held in compulsory confinement only by judicial order and after consent has been sought, if the person has refused medical treatment and has undergone a medical examination. It should be applied only for a short period of time, and only when the drug addict is considered a threat to society;
- (j) Gradually abolish custodial care of persons with mental disabilities.

149. The Working Group reiterates the need to employ measures alternative to detention, as required by international human rights standards, particularly when dealing with minors.